

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
 Executive Summary
 Proposed Rulemaking to Hazardous Waste Rule R315-261
 June 9, 2016

What is the issue before the Board?	The Board is being asked to approve amendments to Hazardous Waste Rule R315-261 for publication in the Utah Bulletin and commencement of a 30-day public comment period.
What is the historical background or context for this issue?	<p>In the April 14, 2016 Board meeting, the Board approved for publication and commencement of a 30-day public comment period on amendments to several Hazardous Waste Rules including R315-261.</p> <p>One of the actions was to remove a section of the rule that was not needed. In removing the section, a portion was inadvertently left in. Part of this proposal is to remove the orphan section. The other proposed changes are to change the word "variance" to "exclusion" or "alternative financial liability requirement." EPA uses the term "variance" in several ways. In several sections, the term "variance" is used to mean that an alternative set of requirements may be used in regulating a waste activity when specific conditions are met. The Utah Solid and Hazardous Act uses "variance" in a very specific and defined way to mean an approval granted by the Board that removes a waste management activity from being subject to the applicable rules. Variances granted by the Board are for one year and are subject to public comment. Variance as used by the EPA is intended to be an alternative set of conditions that are imposed on a waste management facility and are intended to be part of a permit or operation approval granted by the Director.</p>
What is the governing statutory or regulatory citation?	19-6-104(3)(d) and 19-6-106 of the Utah Code Annotated provide rulemaking authority for the Board.
Is Board action required?	Yes. Board approval is needed to begin formal rulemaking.
What is the Division Director's recommendation?	<p>The Director recommends that amendments to Rule R315-261 be approved for publication in the Utah Bulletin to begin the 30-day public comment period.</p> <p>The Director also recommends that the Board set an effective date of August 15, 2016, subject to receiving no comments on the proposed changes.</p>
Where can more information be obtained?	For more information, contact Ralph Bohn at (801) 536-0212.

NOTICE OF
PROPOSED RULE AMENDMENT

- The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- Please address questions regarding information on this notice to the agency.
- The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- The full text of all rule filings may also be inspected at the Division of Administrative Rules.

Rule Information	
DAR file no:	Date filed:
State Admin Rule Filing Key: 157507	
Utah Admin. Code ref. (R no.): R315-261	

Agency Information				
1. Agency:	ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...			
Room no.:	Second Floor			
Building:				
Street address 1:	195 N 1950 W			
Street address 2:				
City, state, zip:	SALT LAKE CITY UT 84116-3097			
Mailing address 1:	PO BOX 144880			
Mailing address 2:				
City, state, zip:	SALT LAKE CITY UT 84114-4880			
Contact person(s):				
Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	\$01-536-0212	\$01-536-0222	rbohn@utah.gov	
(Interested persons may inspect this filing at the above address or at DAR during business hours)				

Rule Title	
2. Title of rule or section (catchline):	General Requirements - Identification and Listing of Hazardous Waste

Notice Type	
3. Type of notice:	Amendment

Rule Purpose	
4. Purpose of the rule or reason for the change:	Remove an orphan subsection that should have been removed in an earlier modification but was missed. Change the word "variance" to "exclusion" or "alternative financial liability requirement." EPA uses the term "variance" in several ways. In the rule sections being modified the term "variance" used to mean that an alternative set of requirement may be used in regulating a waste when specific conditions are met. The Utah Solid and Hazardous Act uses "variance" in a very specific and defined way to mean an approval granted by the Waste Management and Radiation Control Board that removed a waste management activity from being subject to the applicable rules. Variances granted by the Board are for one year and are subject to public comment. Variance, as used by EPA, is intended to be an alternative set of conditions that are imposed on a waste management facility and are intended to be part of a permit or operation approval granted by the Director.

Response Information	
5. This change is a response to comments by the Administrative Rules Review Committee.	<input checked="" type="radio"/> No <input type="radio"/> Yes

Rule Summary	
6. Summary of the rule or change:	Remove an orphan section in R315-261-3 that should have been removed as part of a previous modification. Change the term "variance" to "exclusion" in R315-261-2, 4, 400, 410, 411, and 420. Change the term "variance" to "alternative financial liability requirement" in R315-261-147.

Aggregate Cost Information	
7. Aggregate anticipated cost or savings to:	A) State budget:

Affected: No Yes
 The state will save staff time in preparing and presenting variance requests to the Board. The total savings is not known but would be less than \$2000.00.

B) Local government:
 Affected: No Yes
 Local governments will save the cost of publication of a variance request as part of a public comment process. The cost savings is not known but can range from \$100 to \$500 for each notice published.

C) Small businesses:
 Affected: No Yes
 ("small business" means a business employing fewer than 50 persons)
 Small business will save the cost of publication of a variance request as part of a public comment process. The cost savings is not known but can range from \$100 to \$500 for each notice published.

D) Persons other than small businesses, businesses, or local government entities:
 Affected: No Yes
 ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)
 Other persons will save the cost of publication of a variance request as part of a public comment process. The cost savings is not known but can range from \$100 to \$500 for each notice published.

Compliance Cost Information

8. Compliance costs for affected persons:
 There will not be any compliance costs related to this change for any affected person.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:
 The impact of the rule change will be a small, less than \$500.00, and will be a cost savings for business whenever a business requests approval for a waste management activity that is covered by the rules that are being modified.

B) Name and title of department head commenting on the fiscal impacts:
 Alan Matheson, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.
 State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :
 19-6-106, 19-6-105

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page)
Publisher
Date Issued (mm/dd/yyyy)
Issue, or version (including partial dates)
ISBN Number
ISSN Number
Cost of Incorporated Reference
Adds, updates, removes-- SELECT ONE --

Comments

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) : 08/01/2016

B) A public hearing (optional) will be held:
 On (mm/dd/yyyy): At (hh:mm AM/PM): At (place):

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy): 08/08/2016
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Indexing Information

14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
hazardous waste

File Information

15. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee, and title: Scott Anderson Director Date (mm/dd/yyyy): 05/11/2016

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-261. General Requirements - Identification and Listing of Hazardous Waste.

R315-261-2. Definition of Solid Waste.

(a)(1) A solid waste is any discarded material that is not excluded by Subsection R315-261-4(a) or that is not excluded~~[by variance granted]~~ under Sections R315-260-30 and R315-260-31 or that is not excluded by a non-waste determination under Sections R315-260-30 and R315-260-34.

(2)(i) A discarded material is any material which is:

(A) Abandoned, as explained in Subsection R315-261-2(b); or

(B) Recycled, as explained in Subsection R315-261-2(c); or

(C) Considered inherently waste-like, as explained in Subsection R315-261-2(d).

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

(1) Disposed of; or

(2) Burned or incinerated; or

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

(4) Sham recycled, as explained in Subsection R315-261-2(g)

(c) Materials are solid wastes if they are recycled-or accumulated, stored, or treated before recycling-as specified in Subsections R315-261-2(c)(1) through (4).

(1) Used in a manner constituting disposal.

(i) Materials noted with a “*” in Column 1 of Table 1 are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in Section R315-261-33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a “*” in column 2 of Table 1 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.

(ii) However, commercial chemical products listed in Section R315-261-33 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a “-” in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an “*” in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of Subsections R315-261-4(a)(17), or R315-261-4(a)(23), R315-261-4(a)(24) or R35-261-4(a)(27).

(4) Accumulated speculatively. Materials noted with a “*” in column 4 of Table 1 are solid wastes when accumulated speculatively.

Table 1

Use Energy Reclamation Speculative
Constituting recovery/ 261-2(c)(3) accumulation

	1	2	3	4
Disposal fuel except as provided in 261-2(c)(1)				
261-2(c)(2)			261-4(a)(17)	
			261-4(a)(23)	
			261-4(a)(24)	
			or	
			261-4(a)(27)	
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 that is not excluded under 261-4(a)(13)	(*)	(*)	(*)	(*)

Note 1: All rule references in Table 1 are to R315.

Note 2: The terms “spent materials,” “sludges,” “by-products,” and “scrap metal” and “processed scrap metal” are defined in Section R315-261-1.

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020; F021, unless used as an ingredient to make a product at the site of generation; F022; F023; F026; and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in Sections R315-261-20 through 24 and 30 through 35, except for brominated material that meets the following criteria:

- (i) The material shall contain a bromine concentration of at least 45%; and
- (ii) The material shall contain less than a total of 1% of toxic organic compounds listed in Rule R315-261 appendix VIII; and
- (iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance, hard piping.

(3) The Board shall use the following criteria to add wastes to Subsection R315-261-2(d)(1) or (2):

- (i)(A) The materials are ordinarily disposed of, burned, or incinerated; or
- (B) The materials contain toxic constituents listed in appendix VIII of Rule R315-261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and
- (ii) The material may pose a substantial hazard to human health and the environment when recycled.

(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:

- (i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or
- (ii) Used or reused as effective substitutes for commercial products; or
- (iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall 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 shall 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 Subsection R315-261-4(a)(17) apply rather than Subsection R315-261-2(e)(1)(iii).

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process described in Subsections R315-261-2(e)(1)(i) through (iii):

- (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 Subsections R315-261-2(d)(1) and (d)(2).

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing Sections 19-6-101 through 125 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, shall 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 shall 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 shall show that they have the necessary equipment to do so.

(g) Sham recycling. A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in Section R315-260-43.

R315-261-3. Definition of Hazardous Waste

(a) A solid waste, as defined in Section R315-261-2, is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under Subsection R315-261-4(b); and

(2) It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under Subsection R315-261-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under Sections R315-261-20 through 24 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table 1 to Section R315-261-24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(ii) It is listed in Sections R315-261-30 through 35 and has not been excluded from the lists in Sections R315-261-30 through 35 under Sections R315-260-.20 and R315-260-22.

(iii) (Reserved)

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in Sections R315-261-30 through 35 and has not been excluded from Subsection R315-261-3(a)(2) under Sections R315-260-20 and R315-260-22, Subsection R315-261-3(g), or Subsection R315-261-3(h); however, the following mixtures of solid wastes and hazardous wastes listed in Sections R315-261-30 through 35 are not hazardous wastes, except by application of Subsections R315-261-3(a)(2)(i) or (ii), if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewater at facilities which have eliminated the discharge of wastewater, and;

(A) One or more of the following spent solvents listed in Section R315-261-31: benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived from the combustion of these spent solvents-Provided, That the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into

the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system, at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions, does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption shall use an aerated biological wastewater treatment system and shall use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels shall file a copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in Section R315-261-31: methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived-from the combustion of these spent solvents-Provided That the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system; at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions; does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels shall file a copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling

and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(C) One of the following wastes listed in Section R315-261-32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation-heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050; crude oil storage tank sediment from petroleum refining operations, EPA Hazardous Waste No. K169; clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170; spent hydrotreating catalyst, EPA Hazardous Waste No. K171; and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in Sections R315-261-31 through R315-261-33, arising from de minimis losses of these materials. For purposes of this Subsection R315-261-3(a)(2)(iv)(D), de minimis losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations, e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in Sections R315-261-31 through R315-261-32, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in Sections R315-261-30 through 35 shall either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed in Rule R315-261 appendix VII; and the constituents in the table "Treatment Standards for Hazardous Wastes" in Section R315-268-40 for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority shall be placed in the facility's on-site files; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-261-30 through 35, Provided, That the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in Section R315-261.32: wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that cannot be

demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels shall file copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(G) Wastewaters derived-from the treatment of one or more of the following wastes listed in Section R315-261-32:organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156. Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels shall file copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to

cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Sections R315-261-30 through 35. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste; for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of Rule R315-261.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under Subsection R315-261-3(a)(1) becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in Sections R315-261-30 through 35, when the waste first meets the listing description set forth in R315-261-30 through 35.

(2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in R315-261-30 through 35 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in Sections R315-261-20 through 24.

(c) Unless and until it meets the criteria of Subsection R315-261-3(d):

(1) A hazardous waste shall remain a hazardous waste.

(2)(i) Except as otherwise provided in Subsections R315-261-3(c)(2)(ii), or (g), any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Waste from burning any of the materials exempted from regulation by Subsection R315-261-6(a)(3)(iii) and (iv).

(C)(I) Nonwastewater residues, such as slag, resulting from high temperature metals recovery processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces, as defined in Section R315-

260-10, that are disposed in solid waste landfills regulated under Rules R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified in the tables below for all constituents, and exhibit no characteristics of hazardous waste.

Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action shall have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent Maximum for any single composite sample -
TCLP (mg/l)

Generic exclusion levels for K061 and K062 nonwastewater high temperature metals recovery residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater high temperature metals recovery residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total)(mg/kg)	1.8
Lead	0.15

Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Director for K061, K062 or F006 high temperature metals recovery residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under Rules R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the landfill receiving the waste changes. However, the generator or treater need only notify the Director on an annual basis if such changes occur. Such notification and certification should be sent to the Director by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under Rules R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in Section R315-261-32: organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in Section R315-261-32: - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172.

(d) Any solid waste described in Subsection R315-261-3(c) is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of Rule R315-268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under Sections R315-261-30 through 35, contains a waste listed under Sections R315-261-30 through 35 or is derived from a waste listed in Sections R315-261-30 through 35, it also has been excluded from Subsection R315-261-3(c) under Sections R315-260-20 and R315-260-22.

(e) (Reserved)

(f) Notwithstanding Subsections R315-261-3(a) through (d) and provided the debris as defined in Rule R315-268 does not exhibit a characteristic identified in Sections R315-261-20 through 24, the following materials are not subject to regulation under Rules R315-260 through 266, R315-268, or R315-270:

(1) Hazardous debris as defined in Rule R315-268 that has been treated using one of the required extraction or destruction technologies specified in Table 1 of Section R315-268-45; persons claiming this exclusion in an enforcement action shall have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in Rule R315-268 that the Director, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(g)(1) A hazardous waste that is listed in Sections R315-261-30 through 35 solely because it exhibits one or more characteristics of ignitability as defined under Section R315-261-21, corrosivity as defined under Section R315-261-22, or reactivity as defined under Section R315-261-23 is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in Sections R315-261-20 through 24.

(2) The exclusion described in Subsection R315-261-3(g)(1) also pertains to:

(i) Any mixture of a solid waste and a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(a)(2)(iv); and

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(c)(2)(i).

(3) Wastes excluded under Subsection R315-261-3(g) are subject to Rule R315-268, as applicable, even if they no longer exhibit a characteristic at the point of land disposal.

(4) Any mixture of a solid waste excluded from regulation under Subsection R315-261-4(b)(7) and a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(a)(2)(iv) is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in Sections R315-261-20 through 24 for which the hazardous waste listed in Sections R315-261-30 through 35 was listed. [

~~(3) Waste exempted under Section R315-261-3 shall meet the eligibility criteria and specified conditions in Sections R315-266-225 and R315-266-230, for storage and treatment, and in Sections R315-266-310 and R315-266-315, for transportation and disposal. Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.]~~

R315-261-4. Exclusions.

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of Rule R315-261:

(1)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. “Domestic sewage” means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, i.e., black liquor, that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Subsection R315-261-1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Subsection R315-261-1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion, such as occurs in boilers, industrial furnaces, or incinerators;

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in Subsections R315-261-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in 40 CFR 265.440 through R315-

265-445, which are adopted and incorporated by reference, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant shall maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Director for reinstatement. The Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic specified in Section R315-261-24, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums, if shipped and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911-including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under Subsection R315-261-4(12)(i), provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded under this provision. Except as provided in Subsection R315-261-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under Section R315-261-4. Residuals generated from processing or recycling materials excluded under Subsection R315-261-4(a)(12)(i), where such materials as generated would have otherwise met a listing under Sections R315-261-30 through R315-261-35, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in Subsection R315-261-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto, SIC codes 1311, 1321, 1381, 1382, 1389,

2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172. Recovered oil does not include oil-bearing hazardous wastes listed in Sections R315-261-30 through 35; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in Subsection 19-6-703(19).

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Reserved.

(17) Spent materials, as defined in Section R315-261-1, other than hazardous wastes listed in Sections R315-261-30 through 35, generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in Subsection R315-261-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building shall be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank shall be free standing, not be a surface impoundment, as defined in Section R315-260-10, and be manufactured of a material suitable for containment of its contents; a container shall be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator shall operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings shall be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Director may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Director shall affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads shall provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Director shall also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: The volume and physical and chemical properties of the secondary material, including its

potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads shall meet the following minimum standards: Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under Subsection R315-261-4(a)(17)(iv), the Director shall provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Director providing the following information: The types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification shall be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of Subsection R315-261-4(b)(7), mineral processing spent materials shall be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in Section R315-261-21, and/or toxicity for benzene, Section R315-261-24, waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An “associated organic chemical manufacturing facility” is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. “Petrochemical recovered oil” is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in Subsection R315-261-1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers shall not be accumulated speculatively, as defined in Subsection R315-261-1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers shall:

(A) Submit a one-time notice to the Director, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose shall be an engineered structure made of non-earthen materials that provide structural support, and shall have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose shall be structurally sound and, if outdoors, shall have roofs or covers that prevent contact with wind and rain. Containers used for this purpose shall be kept closed except when it is necessary to add or remove material, and shall be in sound condition. Containers that are stored outdoors shall be managed within storage areas that:

(I) Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

(II) Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(III) Prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of Subsection R315-261-4(a)(20).

(D) Maintain at the generator's or intermediate handlers's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records shall at a minimum contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(III) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials shall:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in Subsection R315-261-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which shall at a minimum identify for each shipment the name and address of the generating facility, name of

transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in Section R315-261-4 preempts, overrides or otherwise negates the provision in Section R315-262-11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in Subsection R315-261-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under Subsection R315-261-4(a)(20), are not subject to the closure requirements of Rules R315-264 and R315-265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under Subsection R315-261-4(a)(20), provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

TABLE

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer shall contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent.

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing shall also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of Subsection R315-261-4(a)(21)(ii). Such records shall at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;
(C) A description of the methods and equipment used to take the samples;
(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this Subsection R315-261-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in Subsection R315-261-1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes when exported for recycling provided that they meet the requirements of Section R315-261-40.

(iii) Used, broken CRTs as defined in Section R315-260-10 are not solid wastes provided that they meet the requirements of Section R315-261-39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of Section R315-261-39(c).

(23) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with Subsections R315-261-4(a)(23)(i) and (ii):

(i)(A) The hazardous secondary material is generated and reclaimed at the generating facility, for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator; or

(B) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in Section R315-260-10, and if the generator provides one of the following certifications: “on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), which is controlled by (insert generator facility name) and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material,” or “on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), that both facilities are under common control, and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material.” For purposes of this paragraph, “control” means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to “control” such facilities. The generating and receiving facilities shall both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records shall contain the name of the transporter, the date of the shipment, and

the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations; or

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: “On behalf of (insert tolling contractor name), I certify that (insert tolling contractor name) has a written contract with (insert toll manufacturer name) to manufacture (insert name of product or intermediate) which is made from specified unused materials, and that (insert tolling contractor name) will reclaim the hazardous secondary materials generated during this manufacture. On behalf of (insert tolling contractor name), I also certify that (insert tolling contractor name) retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process”. The tolling contractor shall maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer shall maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations. For purposes of Subsection R315-261-4(a)(23)(i)(C), tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(A) The hazardous secondary material is contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(B) The hazardous secondary material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8).

(C) Notice is provided as required by Section R315-260-42.

(D) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2.

(E) Persons performing the recycling of hazardous secondary materials under this exclusion shall maintain documentation of their legitimacy determination on-site. Documentation shall be a written description of how the recycling meets all four factors in Subsection R315-260-43(a). Documentation shall be maintained for three years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in Sections R315-261-400, 410, 411 and 420 are met.

(24) Hazardous secondary material that is generated and then transferred to a verified reclamation facility for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in Section R315-260-10, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2;

(iv) The reclamation of the material is legitimate, as specified under Section R315-260-43;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material shall be contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) The hazardous secondary material generator shall arrange for transport of hazardous secondary materials to a verified reclamation facility, or facilities, in the United States. A verified reclamation facility is a facility that has been granted [~~a variance~~]an exclusion under Subsection R315-260-31(d), or a reclamation facility where the management of the hazardous secondary materials is addressed under a hazardous waste Part B permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility shall have been granted [~~a variance~~]an exclusion under Subsection R315-260-31(d) or the management of the hazardous secondary materials at that facility shall be addressed under a hazardous waste Part B permit or interim status standards, and the hazardous secondary material generator shall make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.

(C) The hazardous secondary material generator shall maintain at the generating facility for no less than three years records of all off-site shipments of hazardous secondary materials. For each shipment, these records shall, at a minimum, contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(III) The type and quantity of hazardous secondary material in the shipment.

(D) The hazardous secondary material generator shall maintain at the generating facility for no less than three years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary

materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt;

(E) The hazardous secondary material generator shall comply with the emergency preparedness and response conditions in Sections R315-261-400, 410, 411, and 420.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in Section R315-260-10 satisfy all of the following conditions:

(A) The reclaimer and intermediate facility shall maintain at its facility for no less than three years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records shall at a minimum contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

(III) The type and quantity of hazardous secondary material in the shipment; and

(IV) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the, subsequent, reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility shall send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility shall send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt.

(D) The reclaimer and intermediate facility shall manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and shall be contained. An “analogous raw material” is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes shall be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to Sections R315-261-20 through 24, or if they themselves are specifically listed in Sections R315-261-30 through 35, such

residuals are hazardous wastes and shall be managed in accordance with the applicable requirements of Rules R315-260 through 266, 268, and 270.

(F) The reclaimer and intermediate facility have financial assurance as required under Sections R315-261-140 through 151,

(G) The reclaimer and intermediate facility have been granted [~~a variance~~]an exclusion under Subsection R315-260-31(d) or have a hazardous waste Part B permit or interim status standards that address the management of the hazardous secondary materials; and

(vii) All persons claiming the exclusion under Subsection R315-261-4(a)(24) provide notification as required under Section R315-260-42.

(25) Reserved

(26) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled “Excluded Solvent-Contaminated Wipes.” The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180-day accumulation time limit in Subsection R315-261-4(a)(26)(ii) is being met;

(C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

(27) Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one or more of the following spent solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one or more of the solvents listed in Subsection R315-261-4(a)(27)(i) in a commercial grade for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions; in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iii) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in Subsection R315-261-4(a)(27)(i) to a remanufacturer in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iv) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and the paints and coatings manufacturing sectors, NAICS 325510; or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act, 40 CFR parts 704, 710-711, including Industrial Function Codes U015, solvents consumed in a reaction to produce other chemicals, and U030, solvents become part of the mixture;

(v) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer shall:

(A) Notify the Director and update the notification every two years per Section R315-260-42;

(B) Develop and maintain an up-to-date remanufacturing plan which identifies:

(I) The name, address and EPA ID number of the generator(s) and the remanufacturer(s),

(II) The types and estimated annual volumes of spent solvents to be remanufactured,

(III) The processes and industry sectors that generate the spent solvents,

(IV) The specific uses and industry sectors for the remanufactured solvents, and

(V) A certification from the remanufacturer stating “on behalf of (insert remanufacturer facility name), I certify that this facility is a remanufacturer under pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510; and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089”;

(C) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

(D) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in Sections R315-261-17- through 179 and 190 through 200, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(E) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089; and

(F) Meet the requirements prohibiting speculative accumulation per Subsection R315-261-1(c)(8).

(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, e.g., refuse-derived fuel, or reused. “Household waste” means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources, and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

- (i) The growing and harvesting of agricultural crops.
- (ii) The raising of animals, including animal manures.
- (3) Mining overburden returned to the mine site.

(4)(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(ii) The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with the wastes in Subsection R315-261-4(b)(4)(i), except as provided by Section R315-266-112 for facilities that burn or process hazardous waste:

(A) Coal pile run-off. For purposes of Subsection R315-261-4(b)(4), coal pile run-off means any precipitation that drains off coal piles.

(B) Boiler cleaning solutions. For purposes of Subsection R315-261-4(b)(4), boiler cleaning solutions means water solutions and chemical solutions used to clean the fire-side and water-side of the boiler.

(C) Boiler blowdown. For purposes of Subsection R315-261-4(b)(4), boiler blowdown means water purged from boilers used to generate steam.

(D) Process water treatment and demineralizer regeneration wastes. For purposes of Subsection R315-261-4(b)(4), process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and dissolved chemical salts from combustion system process water.

(E) Cooling tower blowdown. For purposes of Subsection R315-261-4(b)(4), cooling tower blowdown means water purged from a closed cycle cooling system. Closed cycle cooling systems include cooling towers, cooling ponds, or spray canals.

(F) Air heater and precipitator washes. For purposes of Subsection R315-261-4(b)(4), air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.

(G) Effluents from floor and yard drains and sumps. For purposes of Subsection R315-261-4(b)(4), effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.

(H) Wastewater treatment sludges. For purposes of Subsection R315-261-4(b)(4), wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in Subsections R315-261-4(b)(4)(ii)(A) through (F).

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6)(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Sections R315-261-30 through R316-261-35 due to the presence

of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in Subsections R315-261-4(b)(6)(i)(A), (B), and (C), so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO₂ pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(i) For purposes of Subsection R315-261-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting;

calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of Subsection R315-261-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

- (A) Slag from primary copper processing;
- (B) Slag from primary lead processing;
- (C) Red and brown muds from bauxite refining;
- (D) Phosphogypsum from phosphoric acid production;
- (E) Slag from elemental phosphorus production;
- (F) Gasifier ash from coal gasification;
- (G) Process wastewater from coal gasification;
- (H) Calcium sulfate wastewater treatment plant sludge from primary copper

processing;

- (I) Slag tailings from primary copper processing;
- (J) Fluorogypsum from hydrofluoric acid production;
- (K) Process wastewater from hydrofluoric acid production;
- (L) Air pollution control dust/sludge from iron blast furnaces;
- (M) Iron blast furnace slag;
- (N) Treated residue from roasting/leaching of chrome ore;
- (O) Process wastewater from primary magnesium processing by the anhydrous

process;

- (P) Process wastewater from phosphoric acid production;
- (Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
- (R) Basic oxygen furnace and open hearth furnace slag from carbon steel

production;

- (S) Chloride process waste solids from titanium tetrachloride production;
- (T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under Subsection R315-261-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of Section R315-261-24, Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action regulations under Section R315-311-202-1 which adopts 40 CFR 280 by reference.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in Section R315-261-24 that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension, until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Waste Identification Branch (5304), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and the Division of Waste Management and Radiation Control, PO Box 144880, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Non-terne plated used oil filters that are not mixed with wastes listed in Sections R315-261-30 through R315-261-35 if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178 and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in Subsection R315-261-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of Subsection R315-261-4(b)(15)(v) after the emergency ends.

(16) Reserved

(17) Reserved

(18) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180 day accumulation time limit in Subsection R315-261-4(b)(18)(ii) is being met;

(C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(vi) The solvent-contaminated wipes are sent for disposal

(A) To a solid waste landfill that:

(1) is regulated under R315-301 through R315-320

(2) is a Class I or V Landfill; and

(3) has a composite liner; or

(B) To a hazardous waste landfill regulated under Rules R315-260 through 266, 268, and 270; or

(C) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under Rule R315-264, Rule R315-265, or Sections R315-266-100 through R315-266-112.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under Rules R315-262 through 265, 268, 270, and 124 or to the notification requirements of section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d)(1) Samples. Except as provided in Subsection R315-261-4(d)(2), a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of Rules R315-261 through 266, 268 or 270 or 124 or to the notification requirements of Section 3010 of RCRA, when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(2) In order to qualify for the exemption in Subsections R315-261-4(d)(1) (i) and (ii), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(I) The sample collector's name, mailing address, and telephone number;

(II) The laboratory's name, mailing address, and telephone number;

(III) The quantity of the sample;

- (IV) The date of shipment; and
- (V) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in Subsection R315-261-4(d)(1).

(e)(1) Treatability Study Samples. Except as provided in Subsection R315-261-4(e)(2), persons who generate or collect samples for the purpose of conducting treatability studies as defined in Section R315-260-10, are not subject to any requirement of Rules R315-261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of Section R315-261-5 and Subsection R315-262-34(d) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in Subsection R315-261-4(e)(1) is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in “treatability studies”) no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) The sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of Subsections R315-261-4(e)(2)(iii)(A) or (B) are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(I) The name, mailing address, and telephone number of the originator of the sample;

(II) The name, address, and telephone number of the facility that will perform the treatability study;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under Subsection R315-261-4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(A) Copies of the shipping documents;

(B) A copy of the contract with the facility conducting the treatability study;

(C) Documentation showing:

(I) The amount of waste shipped under this exemption;

(II) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(III) The date the shipment was made; and

(IV) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under Subsection R315-261-4(e)(2)(v)(C) in its biennial report.

(3) The Director may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Director may grant requests on a case-by-case basis for quantity limits in excess of those specified in Subsections R315-261-4(e)(2)(i) and (ii) and Subsection R315-261-4(f)(4), for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology; the type of process, e.g., batch versus continuous; size of the unit undergoing testing, particularly in relation to scale-up considerations; the time/quantity of material required to reach steady state operating conditions; or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and timeframes allowed in Subsections R315-261-4(e)(3)(i) and (ii) are subject to all the provisions in Subsections R315-261-4(e)(1) and (e)(2)(iii) through (vi). The generator or sample collector shall apply to the Director and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study

processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant shall include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Director considers necessary.

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies, to the extent such facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of Rules R315-261 through 266, 268 and 270, or to the notification requirements of Section 3010 of RCRA provided that the conditions of Subsection R315-261-4(f)(1) through (11) are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to Subsections R315-261-4(f)(1) through (11). Where a group of MTUs are located at the same site, the limitations specified in Subsections R315-261-4(f)(1) through (11) apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Director, in writing that it intends to conduct treatability studies under Subsection R315-261-4(f).

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of “as received” media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other “as received” hazardous waste is subject to initiation of treatment in all treatability studies in any single day. “As received” waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of “as received” hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to “as received” hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

- (i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;
- (ii) The date the shipment was received;
- (iii) The quantity of waste accepted;
- (iv) The quantity of “as received” waste in storage each day;
- (v) The date the treatment study was initiated and the amount of “as received” waste introduced to treatment each day;
- (vi) The date the treatability study was concluded;
- (vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Director, by March 15 of each year, that includes the following information for the previous calendar year:

- (i) The name, address, and EPA identification number of the facility conducting the treatability studies;
- (ii) The types (by process) of treatability studies conducted;
- (iii) The names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;
- (iv) The total quantity of waste in storage each day;
- (v) The quantity and types of waste subjected to treatability studies;
- (vi) When each treatability study was conducted;
- (vii) The final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under Section R315-261-3 and, if so, are subject to Rules R315-261 through 268 and 270, unless the residues and unused samples are returned to the sample originator under the Subsection R3315-261-4(e) exemption.

(11) The facility notifies the Director, by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) Dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C.1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For Subsection R315-261-4(g), the following definitions apply:

- (1) The term dredged material has the same meaning as defined in 40 CFR 232.2;
- (2) The term permit means:
 - (i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in Subsections R315-261-4(g)(2)(i) and (ii), as provided for in Corps regulations.

(h) Carbon dioxide stream injected for geologic sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in Rule R317-7, are not a hazardous waste, provided the following conditions are met:

(1) Transportation of the carbon dioxide stream shall be in compliance with U.S. Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq. and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable.

(2) Injection of the carbon dioxide stream shall be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the applicable requirements in Rule R317-7;

(3) No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream; and

(4)(i) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261.4(h) has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with, or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with, Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq., and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of Rule R317-7.

(ii) Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261-4(h) has not been mixed with, or otherwise co-injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in Rule R317-7.

(iii) The signed certification statement shall be kept on-site for no less than three years, and shall be made available within 72 hours of a written request from the Director. The signed certification statement shall be renewed every year that the exclusion is claimed, by having an authorized representative, as defined in Section R315-260-10,

annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement shall also be readily accessible on the facility's publicly-available Web site, if such Web site exists, as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

R315-261-147. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Liability Requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under Subsection R315-261-4(a)(24)(vi)(F), or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in Subsections R315-261-147(a)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-261-147(a).

(i) Each insurance policy shall be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement, or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-261-151(h). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-261-151(i). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director. If requested by a Director, the owner or operator shall provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in Utah.

(2) An owner or operator may meet the requirements of Section R315-261-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-261-147(f) and (g).

(3) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-261-147(h).

(4) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-261-147(i).

(5) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a trust fund for liability coverage as specified in Subsection R315-261-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a

financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Subsection R315-261-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as “primary” coverage and shall specify other assurance as “excess” coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-261-147(a)(1) through (a)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is entered between the owner or operator and third-party claimant for liability coverage under Subsections R315-261-147(a)(1) through (a)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-261-147(a)(1) through (a)(6).

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with land-based units, as defined in Section R315-260-10, which are used to manage hazardous secondary materials excluded under Subsection R315-261-4(a)(24) or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who shall meet the requirements of Section R315-261-147 may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in Subsections R315-261-147(b)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-261-147.

(i) Each insurance policy shall be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-261-151(h). The wording of the certificate of insurance

shall be identical to the wording specified in Subsection R315-261-151(i). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in Utah.

(2) An owner or operator may meet the requirements of Section R315-261-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-261-147(f) and (g).

(3) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-261-147(h).

(4) An owner or operator may meet the requirements of Section R315-261-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-261-147(i).

(5) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a trust fund for liability coverage as specified in Subsection R315-261-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Section R315-261-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under Subsection R315-261-147(b), the owner or operator shall specify at least one such assurance as “primary” coverage and shall specify other assurance as “excess” coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-261-147(b)(1) through (b)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is entered between the owner or operator and third-party claimant for liability coverage under Subsection R315-261-147(b)(1) through (b)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-261-147(b)(1) through (b)(6).

(c) Request for ~~[variance]~~alternative. If an owner or operator can demonstrate to the satisfaction of the Director that the levels of financial responsibility required by

Subsection R315-261-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the owner or operator may obtain ~~[a variance]~~an alternative financial liability requirement from the Director. The request for ~~[a variance]~~an alternative financial liability requirement shall be submitted in writing to the Director. If granted, the ~~[variance]~~alternative financial liability requirement shall take the form of an adjusted level of required liability coverage, such level to be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Director may require an owner or operator who requests ~~[a variance]~~an alternative financial liability requirement to provide such technical and engineering information as is deemed necessary by the Director to determine a level of financial responsibility other than that required by Subsection R315-261-147(a) or (b).

(d) Adjustments by the Director. If the Director determines that the levels of financial responsibility required by Subsections R315-261-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the Director may adjust the level of financial responsibility required under Subsections R315-261-147(a) or (b) as may be necessary to protect human health and the environment. This adjusted level shall be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, pile, or land treatment facility, he may require that an owner or operator of the facility comply with Subsection R315-261-147(b). An owner or operator shall furnish to the Director, within a reasonable time, any information which the Director requests to determine whether cause exists for such adjustments of level or type of coverage.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per Subsection R315-261-143(h), the Director shall notify the owner or operator in writing that he is no longer required under Subsection R315-261-4(a)(24)(vi)(F) to maintain liability coverage for that facility or a unit at the facility, unless the Director has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator shall meet the criteria of Subsections R315-261-147(f)(1)(i) or (ii):

(i) The owner or operator shall have:

(A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least \$10 million; and

(C) Assets in the United States amounting to either:

(I) At least 90 percent of his total assets; or
(II) at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least \$10 million; and

(C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either:

(I) At least 90 percent of his total assets; or

(II) at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in Subsection R315-261-147(f)(1) refers to the annual aggregate amounts for which coverage is required under Subsections R315-261-147(a) and (b) and the annual aggregate amounts for which coverage is required under Subsections R315-264-147(a) and (b) and 40 CFR 265.147(a) and (b), which are adopted by reference,.

(3) To demonstrate that he meets this test, the owner or operator shall submit the following three items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-261-151(f). If an owner or operator is using the financial test to demonstrate both assurance as specified by Subsection R315-261-143(e), and liability coverage, he shall submit the letter specified in Subsection R315-261-151(f) to cover both forms of financial responsibility; a separate letter as specified in Subsection R315-261-151(e) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subsection R315-261-147(f)(1)(i) that are different from the data in the audited financial statements referred to in Subsection R315-261-147(f)(3)(ii) or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.

(4) The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in Subsection R315-261-147(f)(3) if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year shall be audited by an independent certified public accountant. The extension shall end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's

or operator's chief financial officer shall send, by the effective date of these regulations, a letter to the Director. This letter from the chief financial officer shall:

- (i) Request the extension;
- (ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;
- (iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, the amount of liability coverage and, when applicable, current closure and post-closure cost estimates to be covered by the test;
- (iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;
- (v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in Subsection R315-261-147(f)(3); and
- (vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in Subsection R315-261-147(f)(3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in Subsection R315-261-147(f)(3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-261-147(f)(1), he shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in Section R315-261-147. Evidence of liability coverage shall be submitted to the Director within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-261-147(f)(3)(ii). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Director shall evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in Section R315-261-147 within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

(1) Subject to Subsection R315-261-147(g)(2), an owner or operator may meet the requirements of Section R315-261-147 by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in Subsection R315-261-147(f)(1) through (f)(6). The wording of the guarantee shall be identical to the wording specified in Subsection R315-261-151(g)(2). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-261-147(f)(3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business

relationship” with the owner or operator, this letter shall describe this “substantial business relationship” and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(2)(i) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of Section R315-261-147 only if the non-U.S. corporation has identified a registered agent for service of process in Utah.

(h) Letter of credit for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by obtaining an irrevocable standby letter of credit that conforms to the requirements of Subsection R315-261-147(h) and submits a copy of the letter of credit to the Director.

(2) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or Utah agency.

(3) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-261-151(j).

(4) An owner or operator who uses a letter of credit to satisfy the requirements of Section R315-261-147 may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust shall be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(5) The wording of the standby trust fund shall be identical to the wording specified in Subsection R315-261-151(m).

(i) Surety bond for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by obtaining a surety bond that conforms to the requirements of Subsection R315-261-147(i) and submitting a copy of the bond to the Director.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond shall be identical to the wording specified in Subsection R315-261-151(k).

(j) Trust fund for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by establishing a trust fund that conforms to the requirements of Subsection R315-261-147(j) and submitting an originally signed duplicate of the trust agreement to the Director.

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(3) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of Section R315-261-147. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in Section R315-261-147 to cover the difference. For purposes of Subsection R315-261-147(j), “the full amount of the liability coverage to be provided” means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by Section R315-261-147, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund shall be identical to the wording specified in Subsection R315-261-151(l).

R315-261-400. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Applicability.

The requirements of Sections R315-261-400, 410, 411, and 420 apply to those areas of an entity managing hazardous secondary materials excluded under Subsection R315-261-4(a)(23) and/or (24) where hazardous secondary materials are generated or accumulated on site.

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d), that accumulates 6000 kg or less of hazardous secondary material at any time shall comply with Sections R315-261-410 and 411.

(b) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) that accumulates more than 6000 kg of hazardous secondary material at any time shall comply with Sections R315-261-410 and 420.

R315-261-410. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Preparedness and Prevention.

(a) Maintenance and operation of facility. Facilities generating or accumulating hazardous secondary material shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

(b) Required equipment. All facilities generating or accumulating hazardous secondary material shall be equipped with the following, unless none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

(1) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(2) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(3) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(c) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(d) Access to communications or alarm system.

(1) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Subsection R315-261-410(b).

(2) If there is ever just one employee on the premises while the facility is operating, he shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Subsection R315-261-410(b).

(e) Required aisle space. The hazardous secondary material generator or intermediate or reclamation facility operating under a verified recycler [~~variance~~exclusion] under Subsection R315-260-31(d) shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(f) Arrangements with local authorities.

(1) The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~exclusion] under Subsection R315-260-31(d) shall attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(i) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(ii) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(iv) Arrangements to familiarize local hospitals with the properties of hazardous ~~[waste]~~secondary material handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(2) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler ~~[variance]~~exclusion under Subsection R315-260-31(d) shall document the refusal in the operating record.

R315-261-411. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Emergency Procedures For Facilities Generating or Accumulating 6000 Kg or Less of Hazardous Secondary Material.

A generator or an intermediate or reclamation facility operating under a verified recycler ~~[variance]~~exclusion under Subsection R315-260-31(d) that generates or accumulates 6000 kg or less of hazardous secondary material shall comply with the following requirements:

(a) At all times there shall be at least one employee either on the premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures specified in Subsection R315-261-411(d). This employee is the emergency coordinator.

(b) The generator or intermediate or reclamation facility operating under a verified recycler ~~[variance]~~exclusion under Subsection R315-260-31(d) shall post the following information next to the telephone:

(1) The name and telephone number of the emergency coordinator;

(2) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(3) The telephone number of the fire department, unless the facility has a direct alarm.

(c) The generator or an intermediate or reclamation facility operating under a verified recycler ~~[variance]~~exclusion under Subsection R315-260-31(d) shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(d) The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(1) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(2) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(3) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility operating under a verified recycler ~~[variance]~~exclusion under Subsection R315-260-31(d) has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility operating under a verified recycler ~~[variance]~~exclusion under Subsection R315-260-31(d) shall immediately notify the National Response Center, using

their 24-hour toll free number 800/424-8802 and follow the requirements Section R316-263-33. The report shall include the following information:

- (i) The name, address, and U.S. EPA Identification Number of the facility;
- (ii) Date, time, and type of incident, e.g., spill or fire;
- (iii) Quantity and type of hazardous waste involved in the incident;
- (iv) Extent of injuries, if any; and
- (v) Estimated quantity and disposition of recovered materials, if any.

R315-261-420. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Contingency Planning and Emergency Procedures for Facilities Generating or Accumulating More Than 6000 Kg of Hazardous Secondary Material.

A generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~exclusion] under Subsection R315-260-31(d) that generates or accumulates more than 6000 kg of hazardous secondary material shall comply with the following requirements:

- (a) Purpose and implementation of contingency plan.

- (1) Each generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~exclusion] under Subsection R315-260-31(d) that accumulates more than 6000 kg of hazardous secondary material shall have a contingency plan for his facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

- (2) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

- (b) Content of contingency plan.

- (1) The contingency plan shall describe the actions facility personnel shall take to comply with Subsection R315-261-420(a) and (f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

- (2) If the generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~exclusion] under Subsection R315-260-31(d) accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of Rule R315-261. The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~exclusion] under Subsection R315-260-31(d) may develop one contingency plan which meets all regulatory requirements. The Director recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-hazardous waste provisions in an integrated contingency plan, the changes do not trigger the need for a hazardous waste permit modification.

(3) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Subsection R315-262-410(f).

(4) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator, see Subsection R315-261-420(e), and this list shall be kept up-to-date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they shall assume responsibility as alternates.

(5) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(6) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of hazardous waste or fires.

(c) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(1) Maintained at the facility; and

(2) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(d) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(1) Applicable regulations are revised;

(2) The plan fails in an emergency;

(3) The facility changes-in its design, construction, operation, maintenance, or other circumstances-in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(4) The list of emergency coordinators changes; or

(5) The list of emergency equipment changes.

(e) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of ~~[waste]~~hazardous secondary material handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in Subsection R315-261-420(f). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

(f) Emergency procedures.

(1) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or his designee when the emergency coordinator is on call, shall immediately:

(i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) Notify appropriate State or local agencies with designated response roles if their help is needed.

(2) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(3) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he shall report his findings as follows:

(i) If his assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) The emergency coordinator shall immediately notify the Utah Department of Environmental Quality 24 hour answering service at 801/536-4123, and the National Response Center, using their 24-hour toll free number 800/424-8802. The report shall include:

(A) Name and telephone number of reporter;

(B) Name and address of facility;

(C) Time and type of incident, e.g., release, fire;

(D) Name and quantity of material(s) involved, to the extent known;

(E) The extent of injuries, if any; and

(F) The possible hazards to human health, or the environment, outside the facility.

(5) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

(6) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(7) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the

facility. Unless the hazardous secondary material generator can demonstrate, in accordance with Subsections R315-261-3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of Rules R315-262, 263, and 265.

(8) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(i) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(9) The hazardous secondary material generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Director. The report shall include:

(i) Name, address, and telephone number of the hazardous secondary material generator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time, and type of incident, e.g., fire, explosion;

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(vii) Estimated quantity and disposition of recovered material that resulted from the incident.

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