

# Hazardous Waste That is Used or Reused



Publication WA 655  
Rev. 2006

Waste & Materials Management  
P.O. Box 7921  
Madison, WI 53707-7921

**Are you thinking about using hazardous waste as an ingredient in a product? If the material is legitimately used, it may be exempt from hazardous waste regulation, under s. NR 605.05(2)(g), Wis. Adm. Code.**

Note: This factsheet addresses the conditional hazardous waste exemption for materials that are used or reused as an ingredient, a commercial product or feedstock substitute, per s. NR 605.05(2)(g), Wis. Adm. Code. For other hazardous waste exemptions that may apply, see s. NR 605.05, Wis. Adm. Code.

Recycling waste by reusing it may save money and lessen environmental impacts by reducing the amount of waste disposed of and virgin materials required. However, because the materials are hazardous, they need to be managed in ways that protect human health and the environment.

Persons generating waste are required to determine if the waste is regulated as hazardous waste. The Department does not make these waste determinations for generators. This fact sheet is intended to help you to determine if a waste that is used or reused is conditionally exempt from hazardous waste regulation.

## *Definitions*

*Recycling*, as defined in s. NR 600.03(186), Wis. Adm. Code, means the beneficial use, reuse or legitimate recovery or reclamation of hazardous waste, and includes the recovery of energy from hazardous waste.

*Reclaimed*, as defined in s. NR 605.03(1), Wis. Adm. Code, means to process a material to recover a usable product or to regenerate a material.

*Used or reused*, as defined in s. NR 605.03(2), Wis. Adm. Code, means to employ a material as an ingredient, including use as an intermediate in an industrial process to make a product, or to employ a material in a particular function or application as an effective substitute for a commercial product.

## *Determine if the Hazardous Waste is Conditionally Exempt from Regulation*

Materials recycled as follows are conditionally exempt from hazardous waste regulation:

- Used or reused as ingredients in an industrial process to make a product without being reclaimed;
- Used or reused as effective substitutes for commercial products; or,
- Used as a feedstock substitute in the original process that generated the waste, without first being reclaimed or disposed on the land.

The exemption does not apply to:

- Use in a manner constituting disposal, which includes use in products that will be applied to the land;
- Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or,
- Materials accumulated speculatively, defined in s. NR 661.01(3)(h), Wis. Adm. Code. Accumulation is not speculatively if a feasible means of recycling can be shown and at least 75% of the material, by volume or weight, is recycled or transferred to another site for recycling in a calendar year.

## *Determine if the Recycling Process is Legitimate*

Whether the waste is being recycled on-site or off-site, the generator is responsible for evaluating the recycling process to assure it is legitimate rather than hazardous waste storage, treatment or disposal subject to licensing.

Consider all of the following criteria to determine if a material is a commodity rather than a waste:

- The material should be managed as a valuable commodity from the point of generation at your facility until it is used in the recycling process.
  - *Is the material handled in a manner similar to that of an analogous raw material?*
  - *If there is no analogous raw material, is the material managed in a way to minimize the potential for releases to the environment?*
- The material should provide a useful contribution to the recycling process or to a product of the recycling process. The evaluation should consider the economics of the recycling transaction.
  - *Is the amount of material substituted into the process similar to the quantity of virgin product otherwise used? The need to substitute larger quantities may indicate the waste has little value.*
  - *Can the material be used without mixing it with a second ingredient in an attempt to disguise or dilute the material's properties?*
- The recycling process should yield a valuable product or intermediate that is either sold to a third party or used by the recycler or generator as an effective substitute for a commercial product or as a useful ingredient in an industrial process.
  - *Can the recycler show that the product meets applicable product specifications or industry standards?*
- The product of the recycling process should not contain significantly elevated levels of any hazardous constituents that are not found in analogous products and should not exhibit a hazardous characteristic that the analogous product does not exhibit.
  - *Can the recycler demonstrate that unacceptable amounts of toxic constituents are not passing through to the products? For example, the recycling process would not be legitimate if cadmium is not normally in the end product, but now it is present because of the use of cadmium contaminated materials.*
  - *If the product normally contains toxic constituents, does the substitution of waste material in the process result in a non-significant increase the amount of toxic constituents in the product?*

Although “significant increase” is not defined, the end product use should help determine if the toxic constituent increase is significant. Potential health or environmental impact that might result due to the material substitution should be considered in determining if the toxic constituent increase is significant.

Note: The above criteria are based on EPA’s proposed changes to the definition of solid waste, published in an October 28, 2003, Federal Register, <http://www.epa.gov/wastes/hazard/dsw/abr-rule/abr-rule-ext.pdf>

## *Document Your Determination of Legitimate Recycling*

The generator must maintain records to support the decision that the process is legitimate recycling. Records should address legitimacy criteria outlined above. The Department may request the following:

- the name, location and address of the recycling facility;
- a description of the waste, hazardous waste number and waste quantity;
- a detailed description of the recycling process and how the waste is used as an ingredient;
- a demonstration that there is a market or disposition of the waste; and
- documentation that the recycling facility has the necessary equipment to conduct the recycling.

If hazardous waste is put into a process that is not legitimate recycling, the generator and all others that handled or managed the waste may be subject to enforcement. The Department recommends generators review a recycling facility's compliance history prior to sending waste. The state in which the recycling facility is located may be able to provide compliance information. The recycling facility should be able to provide names and telephone numbers of hazardous waste regulators familiar with the facility.

### *For More Information*

Review all administrative codes pertaining to hazardous waste in Wisconsin (including groundwater quality, household hazardous waste, and mercury, among others):

<http://dnr.wi.gov/topic/Waste/Laws.html#tabx2>

Read about Wisconsin's hazardous waste regulatory program, including a list of local contacts:

<http://dnr.wi.gov/topic/Waste/Hazardous.html>

Link to Wisconsin government, including laws, legislation, and announcements:

<http://www.wisconsin.gov/state/>

### *How to Reach Us*

For additional information on waste management requirements and recycling options, contact the waste management staff at these DNR regional offices:

- |  |   |
|--|---|
| • Northeast Region, Green Bay<br>920/662-5100  | • Southcentral Region, Fitchburg<br>608/275-3266  |
| • Northern Region, Rhinelander<br>715/365-8900 | • Southeast Region, Milwaukee<br>414/263-8500     |
| • Northern Region, Spooner<br>715/635-2101     | • West Central Region, Eau Claire<br>715/839-3700 |

**Contact 608/266-2111 or [DNRWasteMaterials@Wisconsin.gov](mailto:DNRWasteMaterials@Wisconsin.gov) for further information.**

**Disclaimers:** This document is intended solely as guidance and does not include any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any manner addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of Interior, Washington, D.C. 20240. This publication is available in alternative format (large print, Braille, audio tape, etc.) upon request. Please call 608/266-2111 for more information.