

Hazardous Waste Generator Regulations Compendium

Volume 12: Waste Determination and Point of Generation

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This document includes the following sections:

- Resource View – outlines the document types by which resources are organized.
- Resources by Document Category – lists resources for each document category outlined in the *Resource View*.
- CFR View – provides relevant Code of Federal Regulations (CFR) language reformatted for easy reading.

These three main sections are cross-referenced, i.e., each section includes hyperlinks to the other sections. In addition, each section and its accompanying index include a hyperlink to the Main Index that allows the user to easily navigate from one section to another.

Introduction

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About the Compendium

The Hazardous Waste Generator Regulations Compendium serves as a user-friendly reference to assist regulators, industrial facilities generating and managing solid and hazardous wastes, and the general public in locating resources relevant to specific regulatory topics within the federal hazardous waste generator program.

The objective of this document is to consolidate and streamline the various resources on a topic into a user-friendly format, including references to relevant CFR language, Federal Register (FR) notices, documents posted on RCRA Online (i.e., guidance in the form of memoranda issued by EPA, Q&As, and other publications), and other resources, such as Frequent Questions webpages. The Compendium has been divided into multiple volumes that are available here: www.epa.gov/hwgenerators/hazardous-waste-generator-regulations-compendium.

This document does not change any of the existing solid or hazardous waste requirements, nor does it offer an exhaustive list of relevant resources, as new resources may come into being or older ones may be relevant to a specific issue, but not included. Certain available resources, such as superseded RCRA Online documents, have not been referenced. Rather than including or reproducing referenced resources, this document generally provides hyperlinks to individual resources. As an exception, the Compendium does include relevant sections of the most current CFR regulatory language (as of the date on the cover of the Compendium). The included CFR language has been reformatted to make it easier to read, but it is not a substitute for the official CFR itself, or for the requirements in the CFR. The Government Printing Office frequently updates the e-CFR website; where appropriate, hyperlinks to the respective CFR section at the e-CFR website are provided.

Most states are authorized to administer their own RCRA Subtitle C hazardous waste program. Therefore, states may have their own set of regulations that apply in lieu of federal regulations. State regulations must be at least as stringent as the federal standards, but they can be more stringent. Please visit the following website to determine if the state regulatory program is different from the federal program: <https://www.epa.gov/hwgenerators/links-hazardous-waste-programs-and-us-state-environmental-agencies>, and check with your state agency.

About the Waste Determination and Point of Generation Volume

This volume of the Compendium lists resources pertaining to the waste determination and point of generation provisions that are found at 40 CFR 262.11. Unlike the other volumes in this compendium, this volume includes four separate *Resources by Document Category* tables, each pertaining to a specific topic related to waste determination and point of generation by document type. In addition, technical memos about test methods were not included in this volume, but resources for questions on test methods can be found here: <https://www.epa.gov/hw-sw846>. Any questions regarding waste determinations that trigger recycling requirements should refer to the archived [Definition of Solid Waste \(DSW\) Compendium](#).

For more information regarding other topics that apply to facilities generating hazardous waste, refer to other volumes of the Compendium and [EPA's Hazardous Waste Generators Webpage](#).

Please note that the Hazardous Waste Generator Improvements rule of 2016 created new sections in Part 262, which contains the regulations pertaining to generators. Accordingly, some citations in the generator requirements in older resources in this Compendium are outdated, including references to § 261.5, § 262.34, and others. Please see the preamble to the final Hazardous Waste Generator Improvements rule for a discussion of the reorganization of the regulations (81 FR 85735–85740, November 28, 2016). For a specific crosswalk of the regulation citation changes, refer to www.epa.gov/hwgenerators/hazardous-waste-generator-regulations-crosswalk.

For more information on these regulations and any other questions or comments concerning this document, please contact EPA’s Office of Resource Conservation and Recovery:

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Resource View

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Waste Determination and Point of Generation

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Resources by Document Category

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Table 1: Time of Point of Generation and Location of Point of Generation

Document Category	RCRA Online/Resource	Resource Title	Document Date	Keyword(s)	Notes
Memoranda	12012	Railroad Ties as Hazardous Wastes Under the Mixture Rule, Small Quantity Generator	11/17/1980	Commercial Chemical Products; Mixture Rule; Discard	
	11102	Petroleum Refinery Wastewater, Mixture and Derived-from Rules	8/23/1985	Petroleum Refinery Wastes; K048-K052	Includes a close review of point of generation for K wastes.
	13790	Tank Systems Applicable to Production Tanks During Cleanout, Process Transfer Equipment, and Hose Lines	12/19/1986	Hazardous Waste; Tanks; Manufacturing Process Unit Exemption; 261.4(c)	
	12824	Totally Enclosed Treatment Exemption Applicability to a Baghouse System	12/22/1986	Baghouse Dust; Baghouse Hoppers; Foundries; Treatment	Mentions point of generation for baghouse dust.
	11238	Spent and Reclaimed Solvents, Blending of Reclaimed Xylene	04/15/1987	Solvents; Reclamation; Fuel Blending; Decision to Discard	
	11329	Generator Definition for ATON Batteries	02/25/1988	Vessels; Buoys; Off-Shore Drilling; Transfer Facilities	
	11420	Still Bottoms Generated and Removed from a Recycling Unit	04/18/1989	Solvents; Recycling Still Bottoms; Still Bottom Removal; Newly Generated; Derived-from Rule	

Document Category	RCRA Online/ Resource	Resource Title	Document Date	Keyword(s)	Notes
	11588	Sludges Within Surface Impoundments, Newly Regulated Due to Toxicity Characteristic Rule	03/08/1991	Sludges; Discard; Surface Impoundments; Land Disposal; Toxicity Characteristic	
	13748	Interpretation of the Phrase “Which Can Be Reasonably Expected to Be Present” for Soil That Exhibits the Toxicity Characteristic	06/14/1995	Contaminated Soil; Cleanup; Waste Determinations; Universal Treatment Standards	
	14003	Regulatory Status of Spent Antifreeze	07/13/1995	Spent Antifreeze; Recycling; Like-Wastes, Land Disposal Restrictions Phase 3; Waste Determinations	The data cited in the letter is not attached and it’s impossible to know if the characterization is still reflective of this waste stream.
	11921	Clarification on the Applicability of RCRA to a Foundry Manufacturing Duct System	10/19/1995	Baghouse Dust; Foundries; Origin of Materials Treated	Memo points out that normally baghouse dust would be generated waste when it is removed from the baghouse unless the baghouse is treating material that is already hazardous waste.
	14069	RCRA Applicability to Paint Removal Wastes	03/12/1997	Paint Removal; Coating Removal; Lead Abatement; Co-Generators; Contractors	
	14216	Land Disposal Restriction Notification Requirements for	05/01/1997	Corrosive Wastewater; Treatment; Notification Requirement; Sludge;	In this letter the corrosive wastewater is treated in the

Document Category	RCRA Online/ Resource	Resource Title	Document Date	Keyword(s)	Notes
		Wastewaters and Sludges		Underlying Hazardous Constituents	wastewater treatment unit and is excluded so there is a notification requirement, but the sludge isn't hazardous.
	14291	Management of Remediation Wastes under RCRA	10/14/1998	Area of Contamination; Remediation Wastes; In Situ Treatment; Land Disposal Restrictions; Unknown Date of Generation; Waste determinations	Pg. 3 and pp. 5-6 discuss topics related to point of generation and making hazardous waste determinations.
	14469	Kodak Claim for Manufacturing Process Unit Exemption to the RCRA Subpart BB Air Emissions Requirements	05/26/2000	Manufacturing Process Unit Exemption; 261.4(c)	
	14604	Point of Generation for Spray Painting Operations	05/20/2002	Spray Paint Guns; Spray Booths; Automotive Assembly	
	14632	Guidance on RCRA Subpart J Secondary Containment Requirements at Automobile Spray Painting Operations	11/18/2002	Spray Painting; Spray Gun; Piping; Secondary Containment; Variances from Secondary	
	14834	Regulatory Status of a Water-Solvent Cleaning Solution	11/20/2012	Water-Solvent Mixture; Biphasic Solutions; Testing After Separation; Sampling Protocols; Generator Knowledge	
Q&As	12287	Recycling Residues	09/01/1984	Hazardous Waste Recycling; By-Products	New point of generation when there is a residue from recycling

Document Category	RCRA Online/ Resource	Resource Title	Document Date	Keyword(s)	Notes
				and Residues; New Waste	hazardous waste at the original generator.
	12865	Generation and Recycling	03/01/1987	On-Site Treatment; Solvent Reclamation; Land Disposal Restrictions	
	13324	Land Disposal Restrictions: Point of Generation	10/01/1989	Liquid Hazardous Waste; PCBs; Spill Response; Land Disposal Restrictions	Parts of this memo are superseded (California list removed, see 62 FR 25997; May 12, 1997. See also: Section 261.8), but the point about when land disposal restrictions attach to a waste remains valid.
	13395	Point of Generation	08/01/1990	Corrosive Wastes Mixtures; Land Disposal Restrictions	If wastes are discharged under the Clean Water Act, they are not subject to the land disposal restrictions requirements.
	14718	Requirements for Characteristic Sludge Removed from a Wastewater Treatment Unit	06/01/2004	Wastewater Treatment Units; Sludges; Non-Wastewater Sludges; Land Disposal Restrictions	

Table 2: Generator’s Responsibility to Make the Hazardous Waste Determination

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Document Category	RCRA Online/Resource	Resource Title	Document Date	Keyword(s)	Notes
Memoranda	11158	Used X-Ray Films	05/23/1986	X-Ray Films; Generator Responsibility	
	11223	Regulatory Status of Products EcoLite and EcoLume	03/03/1987	EcoLite and EcoLume; Generator Responsibility; Radioactive Materials	
	11424	Generator Accumulation Time Requirements	04/21/1989	Accumulation Time Limits; Hazardous Waste During Analysis; Generator Responsibility; Unknown Waste	
	11501	Micro-Clear Regulatory Status	03/22/1990	Micro-Clear, Generator Responsibility; Commercial Chemical Product; Characteristic Testing	
	11579	Generator Hazardous Waste Determination and the Toxicity Characteristic Leaching Procedure (TCLP)	02/05/1991	Used Oil; Generator Knowledge; Toxicity Characteristic; Dilution	This memo corrects some aspects of a previous memo (dated November 8, 1990), and includes a discussion of generator knowledge and how the generator should proceed if accurate testing is not available and generator knowledge is not thorough enough

Document Category	RCRA Online/ Resource	Resource Title	Document Date	Keyword(s)	Notes
					to make a determination.
	11599	Toxicity Characteristic Rule Relationship to Used Oil Filter Disposal	04/16/1991	Used Oil Filters; Generator Responsibility; Generator Knowledge; Accurate Hazardous Waste Determination; Toxicity Characteristic	
	11608	Applicability of The TCLP to Waste Munitions	05/21/1991	Discarded Munitions; Generator Responsibility; Generator Knowledge; Toxicity Characteristic Leaching Procedure	
	13730	Policies Regarding Self-Certification of Non-Hazardous Waste	02/07/1995	Non-Hazardous Waste; Self-Certification; Delisting Petitions	Note, the Hazardous Waste Identification Rule mentioned in the memo was not finalized.
	14030	Management of Hazardous Waste Generated in Quantities Less Than 100 Kg and Those That Are Thrown Away with Ordinary Garbage	05/01/1996	Conditionally Exempt Small Quantity Generators (CESQGs) (Now called Very Small Quantity Generators); Generator Responsibility; Hazardous Waste Determinations; Household Hazardous Waste	
	11958	Management and Disposal of Waste Vinyl Mini Blinds	07/12/1996	Waste Vinyl Mini Blinds; Generator Responsibility; Generator Category; Accurate Hazardous	

Document Category	RCRA Online/Resource	Resource Title	Document Date	Keyword(s)	Notes
				Waste Determination; Disposal Standards	

Table 3: More Details on How to Make a Hazardous Waste Determination

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Note: This compendium does not include memos that focus on the details of how to follow the test methods in 40 CFR part 261 when testing for hazardous waste characteristics. For more information on the test methods, see: <https://www.epa.gov/hw-sw846>. For hazardous waste determinations that depend on questions of hazardous waste recycling exemptions or exclusions, please refer to the archived [Definition of Solid Waste Compendium](#).

Document Category	RCRA Online/Resource	Resource Title	Document Date	Keyword(s)	Notes
Memoranda	12171	Soils from Missouri Dioxin Sites, Whether Hazardous	01/06/1984	Dioxins; Listed Wastes; Generator Knowledge; Origin of Toxic Compounds	
	12296	Responsibility of Generator in Hazardous Waste Determinations	09/04/1984	SULFA-CHECK; Spent Slurry; Hazardous Waste Characteristic Testing; Generator Knowledge	Describes the general process of making a hazardous waste determination (but not when). Some details about testing are out-of-date.
	11457	Scrap Dental Amalgam	08/17/1989	Dental Amalgam; Generator Responsibility; Generator Knowledge; Generator Research	
	11603	Applicability of the Toxicity Characteristic and the TCLP	05/01/1991	Generator Responsibility; Generator Knowledge; Testing; Sampling	
	11649	TCLP Extractions Applied to Liquid Wastes, Oils and Solvent-Based Products	10/29/1991	Generator Knowledge; Liquid Hazardous Wastes; Alternative Testing Methodology	

Document Category	RCRA Online/ Resource	Resource Title	Document Date	Keyword(s)	Notes
	13568	Regulatory Status of Soils Contaminated from Releases of Commercial Chemical Products	10/15/1992	Commercial Chemical Products; Contaminated Soil; Contained-In Policy	
	13570	Regulatory Requirements Pertaining to the Management of Waste Solvents and Used Oil	10/28/1992	Waste Solvents; Used Oil; Generator Responsibility; Accurate Hazardous Waste Determination; Land Disposal Restrictions; Generator Knowledge; Mixtures; Waste Minimization	This wide-ranging 8-page memo covers several topics related to a generator's responsibility to make a hazardous waste determination and how one should consider that determination in a variety of cases, particularly several kinds of mixtures.
	11829	Testing of Used Filters	04/12/1994	Used Filters; Solvents; Testing; Generator Knowledge; Representative Samples	
	14618	Hazardous Waste Generated in Laboratories	08/16/2002	Laboratory Waste; Hazardous Waste Determinations; Location of Point of Generation; On-Site Treatment; Land Disposal Restrictions	See also the hazardous waste regulations specifically for waste from academic laboratories in 40 CFR part 262 subpart K and the preamble to those regulations published on December 1, 2008: 73 FR 72912.

Document Category	RCRA Online/ Resource	Resource Title	Document Date	Keyword(s)	Notes
	14790	Role of Material Safety Data Sheet (MSDS) in Hazardous Waste Identification	06/06/2008	Retail Waste; Material Safety Data Sheets; Generator Responsibility; Generator Knowledge	
Q&As	13455	Amendments to Part 262 Hazardous Waste Determination and Recordkeeping Requirements of Part 262 and 268	03/01/1991	Land Disposal Restrictions; Characteristic Testing; Recordkeeping and Reporting	
EPA Guidance Manuals	EPA 530-R-12-001	Waste Analysis at Facilities that Generate, Treat, Store, and Dispose of Hazardous Wastes - Final	04/01/2015	Waste Determination; Waste Analysis Plans; Generator Knowledge; Sampling; Recordkeeping	This wide-ranging guidance discusses many facets of a generator or treatment, storage, and disposal facility's waste analysis and sampling. The most relevant sections for generators are 1.1.1, 1.2, 1.2.3, and 2.2.2.

Table 4: Federal Register Notices

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Document Category	RCRA Online/Resource	Resource Title	Document Date	Keyword(s)	Notes
Federal Register Notices	45 FR 12724	Standards Applicable to Generators of Hazardous Waste; Final Rule	02/26/1980	Hazardous Waste Determination; Generator Responsibility; Enforcement	Pp. 12726–12728.
	45 FR 33084	Hazardous Waste Management System: Identification and Listing of Hazardous Waste Final Rule	05/19/1980	Characteristics; Listings; Representative Samples; Point of Generation; Mixtures	Pp. 33095–33096; pp. 33107–33117. This early rulemaking on making hazardous waste determinations is somewhat outdated and goes into significant detail about the basis of the listings and characteristics but may be useful in understanding the origins of the hazardous waste determination requirement.
	45 FR 72024	Hazardous Waste Management System; General and Identification and Listing of Hazardous Waste; Interim Final Amendment to Rule and Request for Comments	10/30/1980	Time of Point of Generation; Removal from Production Units; Surface Impoundments; Non-operating Manufacturing Process Units; 90 Days	Pp. 72024–72026.
	51 FR 10146	Hazardous Waste Management System: General; Identification	03/24/1986	Off-shore Drilling; Location of Point of	Pg. 10162.

Document Category	RCRA Online/ Resource	Resource Title	Document Date	Keyword(s)	Notes
		and Listing of Hazardous Waste; Standards for Generators of Hazardous Waste; Standards for Transporters of Hazardous Waste; EPA Administered Permit Programs; Authorization of State Hazardous Waste Programs; Final Rule		Generation; Satellite Accumulation Areas	
	51 FR 25422	Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems; Final Rule	07/14/1986	Tanks; Ancillary Equipment; Location of Point of Generation	Pg. 25441.
	51 FR 40572	Hazardous Waste Management System; Land Disposal Restrictions; Final Rule	11/07/1986	Waste Analysis; Generator Knowledge; Recordkeeping; Land Disposal Restrictions; Time of Point of Generation; Preventing Dilution	Pg. 40597; pg. 40620. There was some regulatory back and forth after the publication of this final rule considering changing exactly how the requirement discussed on pg. 40620 works, but it was later affirmed in 52 FR 25766 (July 8, 1987).
	55 FR 4440	Hazardous Waste Management System; Testing and Monitoring Activities;	02/08/1990	Hazardous Waste Determination;	Pp. 4441–4444.

Document Category	RCRA Online/ Resource	Resource Title	Document Date	Keyword(s)	Notes
		Reopening of Comment Period		Characteristics; Sampling	
	55 FR 8666	National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule	03/08/1990	Hazardous Waste Determination; Generator Knowledge; Toxicity; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Unknown Wastes	Pg. 8758; pg. 8762. The discussion on pg. 8758 refers to a passage of the proposed rule that goes into some detail on identifying unknown wastes in the context of CERCLA. This could be used in other contexts as well and the proposal can be found at 53 FR 51444, December 21, 1988.
	55 FR 11798	Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic Revisions; Final Rule	03/29/1990	Surface Impoundments; Toxicity Characteristic Test; Time of Point of Generation; Sampling	Pg. 11830.
	55 FR 46354	Hazardous Waste Management Systems: Identification and Listing of Hazardous Waste; CERCLA Hazardous Substance Designation- Petroleum Refinery Primary and Secondary Oil/ Water/Solids Separation	11/02/1990	Land Disposal Restrictions; Sludge; Waste Management Units; Surface Impoundments; Intent to Discard	Pg. 46380.

Document Category	RCRA Online/ Resource	Resource Title	Document Date	Keyword(s)	Notes
	62 FR 6622	Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties; Final Rule	02/12/1997	Military Munitions; Time of Point of Generation; Abandoned; Deteriorated, Leaking, or Damaged	Pp. 6626–6630.
	62 FR 62079	Joint Nuclear Regulatory Commission (NRC)/EPA Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste	11/20/1997	Hazardous Waste Determination; Generator Knowledge; Mixed Waste; Listings; Characteristics; Testing; Land Disposal Restrictions	Pp. 62081–62085; pp. 62086–62087. This lengthy summary of how hazardous waste determinations are made is in the context of mixtures of hazardous and radioactive waste. It does not change the regulatory scheme but may be a useful description.
	71 FR 29712	Standards Applicable to Generators of Hazardous Waste; Subpart K—Standards Applicable to Academic Laboratories; Proposed Rule	05/23/2006	Hazardous Waste Determinations; Responsibility of Generator; Who Can Make a Hazardous Waste Determination; Land Disposal Restrictions	Pg. 29721. Proposed rule included because the discussion of hazardous waste determinations in this proposal describes how a determination must be made under existing rules.

Document Category	RCRA Online/ Resource	Resource Title	Document Date	Keyword(s)	Notes
	73 FR 72912	Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated with Colleges and Universities; Final Rule	12/01/2008	Academic Laboratories; Where and When to Make a Hazardous Waste Determination; Point of Generation; Subpart K	Pp. 72938–72940. Note that this rule only applies to academic laboratories. It changes where the hazardous waste determination can be made, but not the point of generation of the waste.
	81 FR 85732	Hazardous Waste Generator Improvements Final Rule	11/28/2016	Hazardous Waste Determinations; Accurate Waste Determinations; Point of Generation; Generator Knowledge; Testing	Pp. 85748–85755. This 2016 final rule codified the most significant parts of earlier Federal Register discussions related to point of generation and added significant regulatory language on how a generator must make a waste determination.

List of Additional Federal Register Notices

Note: Many Federal Register Notices touch upon point of generation and hazardous waste determinations in the context of the land disposal restrictions, treatability groups, and treatment residuals. They are not all laid out in the table above, but if you would find them useful, the citations of some of the major ones are below:

- [52 FR 22356](#) (pg. 22357). June 11, 1987.

- [55 FR 22520](#) (pp. 22661–22662). June 1, 1990.
- [58 FR 29860](#) (pg. 29871). May 24, 1993.
- [58 FR 48092](#) (pp. 48111–48112). Sept 14, 1993.
- [61 FR 18780](#) (pp. 18804–18805) (hazardous contaminated media). April 29, 1996.
- [61 FR 33680](#) (pp. 33681–33682). June 28, 1996.
- [63 FR 28556](#) (pp. 28576, 28608, 28617–28619, 28623–28624). May 26, 1998.
- [64 FR 25408](#) (pp. 45411–45412). May 11, 1999.
- [66 FR 27266](#) (pg. 27290). May 16, 2001.
- [71 FR 16862](#) (pg. 16872). April 4, 2006.

CFR View Index

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CFR Location	Title/Topic
262.11	Hazardous Waste Determination and Recordkeeping

CFR View

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NOTE: The CFR language may have been excerpted, reformatted and appended with subheadings and explanations/terms in brackets.

§262.11 Hazardous Waste Determination and Recordkeeping

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A person who generates a solid waste, as defined in 40 CFR 261.2, must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable RCRA regulations. A hazardous waste determination is made using the following steps:

(a) The hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the RCRA classification of the waste may change.

(b) A person must determine whether the solid waste is excluded from regulation under 40 CFR 261.4 [Exclusions].

(c) If the waste is not excluded under 40 CFR 261.4, the person must then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under subpart D of 40 CFR part 261. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a delisting petition under 40 CFR 260.20 and 260.22 to demonstrate to the Administrator that the waste from this particular site or operation is not a hazardous waste.

(d) The person then must also determine whether the waste exhibits one or more hazardous characteristics as identified in subpart C of 40 CFR part 261 by following the procedures in paragraph (d)(1) or (2) of this section, or a combination of both.

(1) The person must apply knowledge of the hazardous characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include:

- Process knowledge (e.g., information about chemical feedstocks and other inputs to the production process);
- Knowledge of products, by-products, and intermediates produced by the manufacturing process;
- Chemical or physical characterization of wastes;

- Information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste;
- Testing that illustrates the properties of the waste; or
- Other reliable and relevant information about the properties of the waste or its constituents.

A test other than a test method set forth in subpart C of 40 CFR part 261, or an equivalent test method approved by the Administrator under 40 CFR 260.21 [petitions for equivalent testing or analytical methods], may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at 40 CFR 260.10.

(2) When available knowledge is inadequate to make an accurate determination, the person must test the waste according to the applicable methods set forth in subpart C of 40 CFR part 261 or according to an equivalent method approved by the Administrator under 40 CFR 260.21 and in accordance with the following:

(i) Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at 40 CFR 260.10.

(ii) Where a test method is specified in subpart C of 40 CFR part 261, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(e) If the waste is determined to be hazardous, the generator must refer to parts 40 CFR 261, 264, 265, 266, 267, 268, and 273 for other possible exclusions or restrictions pertaining to management of the specific waste.

(f) Recordkeeping for small and large quantity generators. A small or large quantity generator must maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by 40 CFR 261.3. Records must be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records must comprise the generator's knowledge of the waste and support the generator's determination, as described at paragraphs (c) and (d) of this section. The records must include, but are not limited to, the following types of information:

- The results of any tests, sampling, waste analyses, or other determinations made in accordance with this section;
- Records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests;
- Records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and

- Records which explain the knowledge basis for the generator's determination, as described at paragraph (d)(1) of this section.

The periods of record retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(g) Identifying hazardous waste numbers for small and large quantity generators. If the waste is determined to be hazardous, small quantity generators and large quantity generators must identify all applicable EPA hazardous waste numbers (EPA hazardous waste codes) in subparts C and D of part 261 of this chapter. Prior to shipping the waste off site, the generator also must mark its containers with all applicable EPA hazardous waste numbers (EPA hazardous waste codes) according to § 262.32 [marking requirements].