

Do Not Underestimate the Importance of Proposed Changes to RCRA Recycling Exclusions

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Before the end of July, the Environmental Protection Agency (EPA) will propose major changes to the hazardous waste recycling exclusions available under the Resource Conservation and Recovery Act (RCRA). It is widely known that EPA is proposing to tighten exclusions adopted as part of the 2008 RCRA "Definition of Solid Waste Rule" (DSW) amendments (*i.e.*, the "generator controlled" and "transfer-based" (third-party recycler) exclusions). Less well understood, however, are the important impacts some subtle proposed changes would have.

EPA's proposed changes will also affect industries that operate under other RCRA recycling exclusions (*i.e.*, the "pre-2008" recycling exclusions). There are 32 such exclusions, and, for the first time, EPA is proposing to make these subject to the same basic conditions that apply to the two 2008 DSW exclusions. Exceptions apply only where recycling is documented to be "legitimate."

Among the 32 recycling exclusions affected are lead-acid batteries, spent sulfuric acid, cathode ray tubes, shredded circuit boards, processed scrap metal, waste-derived fuels and oils from petroleum refineries, pulping liquors and certain spent refrigerants. If the new rules are adopted as proposed, new documentation and collection containment requirements may apply to existing programs.

All companies that recycle hazardous waste or transfer it for recycling will need to carefully review and understand this proposal.