

## EPA's Proposed Definition of Solid Waste Broader than Many Realize

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On July 22, the Environmental Protection Agency (EPA) published a proposed rule to revise the definition of "solid waste" conditional exclusions for intra-company recycling and third-party recycling activities under the Resource Conservation and Recovery Act (RCRA). These "generator-controlled" and "transfer-based" exclusions, when adopted in 2008, were intended to alleviate hazardous waste management requirements for wastes being reclaimed, provided certain new conditions were met. However, a successful legal challenge required EPA to narrow the broad scope of the exclusions. Comments on the Agency's proposed new approach were initially due on September 20, but the deadline has been extended to October 20, 2011.

With much less fanfare, however, the rule could also significantly alter other recycling exclusions under RCRA (the 32 so-called "pre-2008" recycling exemptions), including the exemptions at 40 C.F.R. § 266.80 for lead batteries, § 261.4(a)(7) for spent sulfuric acid, § 261.4(a)(22) for used cathode ray tubes, § 261.4(a)(13) for processed scrap metal, and § 261.6(a)(3)(2) for scrap metal, to name a few. EPA is proposing to add three new conditions to the 32 exclusions: a "legitimate recycling" standard (§ 260.43); mandatory "containment" (§260.10); and notification (§ 260.42) requirements. These conditions were applied in 2008 to the "generator-controlled" and "transfer-based" exclusions, but not to the pre-2008 exclusions.