

To be "hazardous waste," the material must first be a "solid waste." 42 U.S.C. § 6903(5).

To be a "solid waste," the material must be "discarded material" which is not excluded by 40 C.F.R. § 261.4(a) or by a variance. Excluded materials include, e.g., domestic sewage, point source industrial wastewater discharges under the federal Clean Water Act, irrigation return flows, and certain "closed loop" secondary materials.

To be "discarded," the material must be "abandoned," "recycled" or "inherently wastelike." 40 C.F.R. § 261.2(a)(2).

To be "abandoned," the material must be either:

"Disposed of" in land or water

"Speculatively accumulated"

"Burned or incinerated"

If burned to recover materials in an industrial furnace, then NOT a solid waste

If burned to destroy in a boiler, furnace or incinerator, then a "solid waste"

If burned to recover energy in an industrial furnace or boiler, then "recycled"

To be "recycled," the material must be either a spent material, a listed or characteristically hazardous sludge, a listed or characteristically hazardous by-product, a listed commercial chemical product, or scrap metal. If anything else (e.g., co-product), then cannot be discarded through recycling. If in one of these categories, then must be either:

"Used in a manner constituting disposal" in land or water

"Burned for energy recovery"

"Reclaimed" through re-generation or recovery (e.g., regeneration of spent solvents)

"Speculatively accumulated"

A recycled material is not solid waste if it is (1) used or reused as an ingredient in an industrial process to make a product (provided the material is not "reclaimed"), (2) used or reused as an effective substitute for a commercial product, or (3) returned to the original process from which it was generated (without being reclaimed). See 40 C.F.R. § 261.2(e).

To be "inherently wastelike," a material must be either:

Listed as such a material (i.e., F020 through F023, F026, and F028)

Be added by EPA to the list of "inherently wastelike" materials. To be listed, the material must satisfy specific criteria in section 261.2(d)(2), including toxic constituents listed in Appendix VIII.