

MAKING HAZARDOUS WASTE DETERMINATIONS

Determining whether your waste is “hazardous” is a very important responsibility. This process determines how the waste will be managed while on-site, and most importantly, how it is to be disposed of. Improper management and/or disposal of hazardous waste can potentially expose employees, the public, and/or the environment to imminent harm.



What is the Regulation? Federal regulations pertaining to the environment are found at Title 40 of the U.S. Code of Federal Regulations. The hazardous waste regulations are at 40 CFR Parts 260 through 273. Part 262 is the part containing “generator” standards for managing hazardous wastes. The requirement for generators to make a hazardous waste determination for all their solid wastes is found at Part 262, Section 262.11. These regulations are published by the Federal Government on the internet at the following web address: <http://www.ecfr.gov>. In the Browse pull-down menu at that web site, select “Title 40 – Protection of the Environment,” and press Go. Know that the State of New Mexico has generally adopted the federal hazardous waste regulations. New Mexico’s hazardous waste regulations are found at New Mexico Annotated Code, Title 20, Chapter 4, Part 1 (20.4.1 NMAC for short): <http://www.nmcpr.state.nm.us/nmac/>.

Making a Hazardous Waste Determination The first thing a generator must realize when making a hazardous waste determination is that making the determination is a process; not just the running of laboratory analyses. The following are brief descriptions of the different types of hazardous wastes. The regulations containing the exact text of the definitions and requirements are found at 40 CFR, Part 261 – *Identification and Listing of Hazardous Wastes*.

- I. **Step one: Determine if your waste is a “solid waste.”** (See 40 CFR Sections 261.2 and 261.4(a))
- II. **Step two: Determine if your waste is excluded or exempted from regulation as a “hazardous waste.”** (See 40 CFR Section 261.4(b))
- III. **Step three: Determine if your waste is a “listed” hazardous waste.**

There are four lists as follows:

- a) **Non-Specific Source List, or “F” List** - This is a list of chemical wastes used by many different industries, *i.e.* no-specific industry source. All these wastes get a “waste code” with a capital F plus a three digit number. (See 40 CFR Section 261.31)
- b) **Specific Source List, or “K” List** - This is a list of chemical wastes from specific manufacturing processes for a specific industry. All these wastes get a waste code with a capital K plus three digits. (See 40 CFR Section 261.32)
- c) **Acutely Toxic List, or “P” List** - This is a list of acutely toxic chemicals, which means they are extremely dangerous or deadly as a result of one or a few exposures. There are also very strict volume limits regarding storage of these types of wastes because they are so deadly. All these wastes get a waste code with a capital P plus three digits. (See 40 CFR Section 261.33)

d) Toxic List, or U List - This is a list of toxic chemicals, which means they can cause cancer or severe irreversible illness or disease upon chronic (repeated) exposure. All these wastes get a waste code with a capital U plus a three digit number. (See 40 CFR Section 261.34)

IV. Step four: Determine if the waste is “characteristically” hazardous.

The physical characteristics of concern are as follows:



a) Ignitable - A liquid with a flash point less than 140°F or a material that is listed as a Class 5.1 Oxidizer by the US Department of Transportation. These wastes get a D001 code. (See 40 CFR Section 261.21)



b) Corrosive - An aqueous (waterborne) liquid that has a pH of less than or equal to 2 or greater than or equal to 12.5. Also, any material that can corrode steel at a certain rate by a prescribed lab test. These wastes get a D002 code. (See 40 CFR Section 261.22)



c) Reactive - Any material that can explode or combust spontaneously (air reactive) or by reaction with water (water reactive), to an extent that it causes a severe hazard to human health or the environment, and/or creates a hazardous dust, mist, fume, or gas. These wastes get a D003 code. (See 40 CFR Section 261.23)



d) Toxic - Any material that contains greater than a certain amount of any of 40 hazardous compounds listed in this section when determined by the prescribed test called a Toxicity Characteristic Leachate Procedure (TCLP). This list contains 8 RCRA metals, 2 pesticides, 2 herbicides, and 28 volatile or semi-volatile compounds of concern. These wastes get a D004-D043 code depending on the parameter(s). (See 40 CFR Section 261.24)

For **characteristic waste** only, a generator can use what's known as acceptable knowledge to limit the number of parameters you must sample, or eliminate the need for sampling altogether. However, if regulators are in doubt of the acceptable knowledge used for determination purposes, it is advisable to be able to back up that knowledge with sampling or other definitive information to prove the assertion valid. Usually, the first step would be to consult the manufacturer or the Material Safety Data Sheet (MSDS). This will often reveal if the waste is RCRA regulated.

If your waste meets any one or more of the above criteria, it is a RCRA-regulated hazardous waste and must be managed on-site as such and be properly disposed by a qualified permitted facility.

If you have any questions regarding making a hazardous waste determination please call the New Mexico Environment Department's Hazardous Waste Bureau for further assistance and information. The contact telephone number is (505) 476-6000, or toll free at (866) 428-6535.