

October 20, 2011

OSWER Docket  
Environmental Protection Agency  
Mail Code 28221T  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

ATTN: Docket ID No. EPA-HQ-RCRA-2010-0742

RE: Definition of Solid Waste Notice Proposed Rule (76 FR 44094)

Dear Sir/Madam:

The Hazardous Waste Recycling and Program Information Management Task Forces (Task Forces) of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) Hazardous Waste Subcommittee, have reviewed the July 22, 2011 Proposed Rule concerning potential revisions to the definition of solid waste (DSW) at 76 FR 44094. The Task Forces' comments are enclosed.

ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes State waste program experts in the management and regulation of solid and hazardous waste.

The comments we offer below represent the majority opinion of the Task Forces (TF) and incorporate comments shared with the TF by numerous States regarding major aspects of the potential revisions to the rule. States, including those on the TF may also submit comments reflecting their own unique perspectives on the potential revisions to the rule. These comments have not been reviewed or adopted by the ASTSWMO Board of Directors.

Overall, we are supportive of the Proposed Rule and applaud EPA's effort in proposing a rule that is of interest to so many different sectors. In our comments we state the areas that we support, such as elimination of the transfer-based exclusion, and notification as a condition for exclusion. We also note those that need additional review, such as all the proposed alternatives or the use of an alternate manifest system. We also encourage EPA to require generators and recyclers to have documentation of legitimate recycling of hazardous secondary materials.

We understand EPA's goal to ensure national consistency with variance and non-waste determinations; however, some members do not support the proposed requirement for States to "share copies of the variance and non-waste determination petitions and tentative decisions" with EPA for comment. If the State is authorized to administer the RCRA Subtitle C Program, then the State bears the responsibility to issue these decisions. EPA's role in these cases is to conduct their reviews through the oversight process.

We appreciate the opportunity to provide comments on this important topic, and look forward to continuing to work with U.S. EPA on definition of solid waste issues of mutual interest. Please contact Ron Shell, HW Recycling TF Chair at 334-271-7748 or [rts@adem.state.al.us](mailto:rts@adem.state.al.us) if you have any questions regarding our submittal.

Sincerely,



Tammie Hynum, (AR)  
Chair, ASTSWMO Hazardous Waste Subcommittee

cc: Charlotte Mooney, ORCR  
ASTSWMO HW Recycling Task Force  
ASTSWMO HW PIM Task Force  
ASTSWMO Board of Directors

## **Preamble Section VI: Definition of Solid Waste Environmental Justice Analysis**

In general, all rules developed by EPA should be protective and not have any adverse human health or environmental effects in any communities. EPA's rules should be equally protective in either a densely populated urban area or an isolated, sparsely populated rural area. To evaluate the technical aspects of a rule based on environmental justice (EJ) circumvents the Agency's mission to protect all communities.

The EJ Methodology used in evaluating the impact of the DSW rule does not appear to provide information necessary to ever determine the need to change the rule. This approach may be better suited to use during the implementation phase of the rule thereby allowing site-specific data to determine regulatory action (i.e., if the data supports a disproportionate burden protective measure, then it must be addressed).

As a result of the EJ Methodology, it appears that the final conclusion will remain constant in any rulemaking evaluation. The outcome would be the same and changes to the proposed rule would not be affected by the six step approach.

The document contains an excessive amount of information that may overwhelm most readers. It may be necessary to condense the document contents or provide technical assistance to the general public to receive sufficient, meaningful input. Moreover, the term "disproportionate," should be clearly defined to ensure that the readers understand the meaning of the term. There are also a number of terms in Attachment G, the glossary, that are vague and should be expanded (e.g., the listed waste codes including the unconventional terms "F1\_5" and "KXXX").

## **ASTSWMO Hazardous Waste Recycling Task Force (TF) DSW Comments**

### **Preamble Section VII: Exclusion for Hazardous Secondary Materials That Are Transferred For The Purpose Of Legitimate Reclamation**

The Task Force (TF) agrees with the proposal to eliminate the transfer-based exclusion. We agree with EPA's conclusion that "hazardous secondary materials transferred for the purpose of legitimate reclamation are most appropriately regulated under Subtitle C of RCRA" and therefore fully support withdrawal of the transfer-based exclusion. The TF agrees with EPA's analyses that the transfer-based exclusion may pose significant risk to human health and the environment from hazardous secondary material that may become discarded, and that the 2008 DSW final rule has serious gaps that create the potential for adverse effects to human health and the environment.

## **Preamble Section VIII: Alternative Subtitle C Regulation for Hazardous Recyclable Materials**

The TF believes the proposed alternative system to replace the transfer-based exclusion provides a needed operational and tracking requirement that the transfer-based exclusion lacked.

The TF supports the proposal to allow accumulation for up to one year under the appropriate hazardous waste generator standards and additional safeguards. The TF would suggest that the status of accumulated material be clarified when accumulation for greater than one year occurs. For example, material is added to a tank on a daily basis and none is removed for 366 days. Would only the material placed in the tank on day one lose the exemption or would all the material lose the exemption?

The TF believes the substitution of the words “hazardous recyclable material” (HRM) for the words “hazardous waste” on containers or tanks holding hazardous secondary materials (HSM) managed under this exclusion would help regulators and facilities identify and track the material.

We find the distinction between HSM and HRM to be somewhat confusing. HSM and HRM seem to be the same thing with one distinction. If the reclamation occurs under the control of the generator (whether on-site or off-site), the material is called “hazardous secondary material” and is not a solid waste. If the reclamation is performed by a third party not affiliated with the generator, the material is called “hazardous recyclable material” and is a fully-regulated hazardous waste with alternative generator standards to encourage recycling. We believe the final rule should replace all uses of “hazardous recyclable material” with “hazardous secondary material.”

However, if EPA retains both terms in the final rule, then the TF suggests that the term “hazardous recyclable materials” (HRM) be defined before its first use.

The TF supports an increased accumulation time to encourage recycling, but believes the one-year generator accumulation period of the proposed rule should be replaced with the speculative accumulation provisions. The TF does not believe the speculative accumulation provisions would diminish the rate of recycling compared to a one-year accumulation period. Additionally, the use of the already established speculative accumulation provisions would avoid the confusion of having two different generator requirements (speculative accumulation and one-year accumulation) in similar circumstances.

The TF strongly supports notification as a condition for the exclusion. The TF views notification as an important step to enable the necessary regulatory oversight expected by the public. If notification is not considered a condition, the TF believes the perceived benefits of anonymity would outweigh the risk of an administrative violation. We also support the requirement to submit a notification when a facility stops managing materials in accordance with the exclusion.

Most TF members believe EPA should retain the biennial reporting requirement for hazardous recyclable materials and not require subsequent notifications in even-numbered years. By requiring information in biennial reports about the actual quantities of HRM managed, States and EPA can gauge the effectiveness of the rule in promoting recycling. Facilities that generate or recycle HRM will already have records identifying quantities managed, so there will be no additional burden to include this in the biennial reports. It seems redundant to the TF to require this information in the notification and in a biennial report.

Some TF members do not believe a biennial reporting requirement is necessary if a generator complies with EPA's proposed restrictions related to speculative accumulation. They agree with EPA's proposal to require re-notification in lieu of requiring biennial reports for generators that send their HRM off-site.

The TF believes that the individual portions of the reclamation plan should be requirements for the exclusion, but the plan should be a condition of the exclusion. It is difficult for the TF to envision how a facility could meet the requirements for the exclusion without a plan.

The TF does not believe an upper limit should be set on the amount of HRM that may be accumulated on-site by a generator. The one-year accumulation limit (or suggested use of the speculative accumulation provisions) should prevent over-accumulation. The TF thinks the use of an upper limit is too subjective and is counter to the currently allowed HRM that have no upper limit.

The TF does not support the use of an alternate manifest system or use of basic shipping papers, but believes the existing manifest system should be used to transport HRMs. In view of the problems with establishing an e-manifest system, the outlook for the establishment of a new, separate system for HRMs looks dim. We believe there is really no advantage to be gained by the use of an alternate manifest system. The current hazardous waste manifest system is fully adequate to track shipments of HRM. According to the preamble, the proposed alternate manifest would require the same information as the current manifest. Implementing a new shipment tracking mechanism would seem to be unnecessary and would not improve tracking, but would likely increase the cost of compliance and decrease the rate of recycling. Because these hazardous recyclable materials are defined as a hazardous waste, the TF believes that the use of the current manifest system is the most appropriate document for tracking shipment of these wastes from cradle to grave.

Most TF members support the use of alternate standards that would be consistent with the facility's generator status. Adherence to the large quantity or small quantity generator (LQG/SQG) standards with the exception of the accumulation time would provide adequate protection from mismanagement and use standards that are already familiar to both regulators and facilities. Those TF members agree with the preamble statement "Generators operating under the proposed alternative standards would be able to accumulate hazardous recyclable materials on site for one year or less without a permit or without having interim status,

provided (emphasis added) that they follow the usual requirements for on-site management of hazardous wastes by large quantity or small quantity generators....”

Some TF members support EPA’s alternative proposal to apply standards similar to the small quantity generator requirements for management of HRM by HRM generators.

### **Preamble Section IX: Revisions to the Exclusion for Hazardous Secondary Materials That Are Legitimately Reclaimed Under the Control of the Generator**

The TF remains firmly convinced that management of HSMs in land-based units should be prohibited. It is difficult for the TF to envision circumstances where the management of a HSM in a land-based unit would not lead to contamination of the underlying and adjacent soils. The TF believes HSM management at a generator site should be limited to those management units meeting the requirements for generators under 40 CFR 262.34(a)(1), including the applicable provisions of Part 265. We also believe HSM should be stored in units that meet the same design, operating, inspection, and closure standards for containers, tanks, containment buildings, and drip pads. Merely excluding a material from the definition of solid waste does not reduce the risk to the environment when it is released from a storage unit. Therefore, there must be some technical standard in which to gauge the integrity of the unit.

The TF believes the examples given in an attempt to define releases of HSM to the environment in the definition of the term “contained” are helpful, but have some significant omissions. The examples do not include soil contamination below the unit. One example cites release to groundwater, but that is too late. The contamination should not be allowed to pass through the soil to the groundwater before it is considered a release. The TF believes the rule should require inspection of land-based units, groundwater monitoring, or other definitive measures to determine when releases have occurred.

Another omission is the failure to specify what concentration of HSM constituents would need to be detected to constitute a release. This will cause the regulated facility uncertainty about the level of controls necessary to avoid a situation that would be considered a violation by regulators.

To alleviate these deficiencies with term **“contained”** the TF believes the definition of “contained” should be removed and the rule text should be revised so that all references to “contained” instead refer to storage in tanks, containers, on drip pads, or in containment buildings meeting the requirements of 40 CFR 262.34(a)(1).

In an effort to clarify the regulatory status of units from which releases have occurred, the preamble notes two provisions are being added to the “contained” standard: “(1) A HSM released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation; and (2) HSM managed in a unit with leaks or other continuing or intermittent unpermitted releases of the hazardous secondary material to the environment is discarded and a solid waste.” The corresponding proposed text of 40 CFR 261.4(a)(23)(ii)(B)

uses the word “recycling” in place of “reclamation” and omits the phrase “or intermittent unpermitted”. This should be clarified in the final rule.

The preamble also notes that “in the event of a release from a unit to the environment, the HSM that remain in the unit could still meet the terms of the exclusion, as long as the other provisions of the containment definition are met.” Our reading of the third sentence of the rule text at 40 CFR 261.4(a)(23)(ii)(B) is exactly the opposite. Based on the wording of the actual rule text, if the unit has leaks or releases to the environment, any HSM within that unit is “discarded and a solid waste.” This should be clarified in the final rule.

The TF believes that generators under this exclusion should be held to the same container standards as hazardous waste generators. EPA’s proposal for separate containment standards for HSM reclaimed under the control of the generator would be more confusing to regulated facilities and more difficult for regulators to enforce.

The TF supports notification as a condition of the exclusion. The HSM could be subject to full regulation as a hazardous waste if the generator or reclaimer failed to submit notification. The TF also believes that enforcement discretion can be used if the generator/recycler is meeting the other recycling requirements, but only failed to submit a notification. In that circumstance, a State could elect to only cite an administrative violation and not vacate the exclusion. A notification requirement would discourage facilities that might otherwise consider trying to “fly below the radar”, while it would at the same time allow States to exercise appropriate enforcement discretion when the failure to notify is simply an administrative oversight.

The TF believes that all facilities subject to speculative accumulation prohibitions, including those using the generator controlled exclusion, must be able to demonstrate they are in compliance with the prohibition. The easiest and clearest way to demonstrate compliance would be with logs, labels and other documentation. While the TF believes the current speculative accumulation provisions already mandate some method to positively demonstrate a generator is meeting the 75% threshold for recycling, the TF would favor updating 261.1(c)(8) to require signs with an accumulation start date, notations in an inventory log, or another equivalent documentation method to assure speculative accumulation is not occurring.

The TF also supports the proposed recordkeeping requirements for facilities that operate under a tolling agreement, but believes the exclusion should be withdrawn, given that no facilities have notified they are operating under this provision since the 2008 DSW rule was finalized.

The proposed rule at 261.4(a)(23)(i)(B) does not provide for any method to track a generator’s HSM when it is transferred off-site to another location under the control of the generator. To ensure HSM is being handled as a valuable commodity and “discard” has not occurred while in transit, a bill of lading or other shipping document must be required whereby the receiving site certifies it has received the full quantity identified on the shipping paper.

## Preamble Section X: Revisions to the Definition of Legitimacy

Most TF members support the proposal to apply the legitimacy factors to all hazardous materials recycling, but believes there are several categories (e.g., lead acid batteries, circuit boards, scrap metal, etc.) where it would not be appropriate to apply them. At least one State has already taken action to codify the four criteria as mandatory into their hazardous waste regulations. Codifying the legitimacy criteria will give enforcement personnel actual codified criteria to make determinations on legitimate recycling and will also provide criteria for the regulated community to use in evaluating potential recycling efforts.

The TF encourages EPA to require generators and recyclers to have documentation of legitimate recycling of HSMs. Most TF members support applying a documentation requirement to all HRM except certain recycling exclusions where there is a long established recycling industry, such as lead-acid battery and shredded circuit board. The TF believes the documentation requirement is necessary for the implementation and enforcement of the legitimacy provisions.

As stated above, the TF believes some categories of HRM should be exempt from the legitimacy factors. One category in particular is closed-loop recycling. The TF believes closed-loop recycling should be considered legitimate even if it fails legitimacy factor four if the generator reuses the reclaimed material in his original process.

One TF member believed the legitimacy factors should not be applied to all recycling. They felt that a facility recycling a waste that had already been specifically excluded as a solid waste or hazardous waste in the regulations should not have to prove that the legitimacy factors were being met. However, they agreed that facilities recycling materials that would otherwise be a hazardous waste should have to meet all the legitimacy factors in order for that material to be excluded.

The TF believes the text of 260.43(a)(4) contains a wording error. The text states that the product of the recycling process must either (1) contain hazardous constituents at levels at or below those in analogous products or (2) not exhibit a hazardous characteristic not present in an analogous product. The preamble states that the product of the recycling process must both (1) contain hazardous constituents at levels at and below those in analogous products and (2) not exhibit a hazardous characteristic not present in an analogous product. The TF believes the rule text should be "and" to require both conditions to be met.

With respect to the proposed 260.43(a)(4), the TF would suggest that EPA specifically codify that "the product of the recycling process" must be the "first-generation" product, not products subsequently produced from the first-generation product. For example, if a hazardous spent Material A undergoes reclamation to produce "fresh" Material A and then that fresh Material A is subsequently used to make a final Product B, "the product of the recycling process" is the fresh Material A, not Product B.



Some TF members believe that legitimacy factor four did not go far enough. They believe that in cases where the finished product would be applied to or used on the ground and the comparable product did not contain measurable concentrations of the hazardous constituent, the product should meet the LDR standards for the hazardous constituents.

The TF does not support the petition provision of 260.43(c) allowing a facility to petition EPA or an authorized state to consider a recycling process “legitimate” if it meets the first two factors, but fails to meet one or both of the last two. A petition process would unnecessarily establish a “backdoor” way to sidestep the only quantitative measure of legitimate reclamation available. This would also work against EPA’s stated goal to “increase consistency in determinations across States, as well as place more-compliant States at an economic disadvantage.

In legitimacy factor three, the TF members believe that requiring HSM to be managed in a manner consistent with the management of the raw material or “in an equally protective manner” is not protective enough if it allows HSM to be managed in a land-based unit. As stated above, the Task Force supports the requirement to contain HSMs in units that meet the same design, operating, inspection, and closure standards for containers, tanks, containment buildings, and drip pads.

#### **Preamble Section XI: Revisions to Solid Waste Variances and Non-Waste Determinations**

The TF supports the changes to the partial reclamation variance. The TF also supports the removal of the sixth criterion, “other relevant factors,” and agrees it is too subjective. The TF supports the proposed revisions for three primary reasons: the variance is tied to the legitimacy criteria of 260.43, the rule is clear that all five decision criteria must be evaluated in making the determination, and a sixth factor (“other relevant factors”) has been removed because it is too subjective.

The TF supports the proposed requirement for facilities seeking non-waste determinations to affirmatively demonstrate why they cannot meet, or should not have to meet, one of the existing exclusions under 261.2 or 261.4. To alleviate this bottleneck in the review process, requiring this information to be provided to regulatory agencies as part of the application process should not be overly burdensome to facilities and should expedite regulatory agency review.

The TF is concerned that regionalizing variance and non-waste determinations could easily work against the goal stated in the preamble to “foster greater consistency on the part of implementing agencies.” The TF would suggest that EPA’s involvement in variances and non-waste determinations continue to be processed by EPA’s Headquarters offices, which would help achieve the stated goal to “ensure national consistency and protectiveness.” The TF believes that there are region-to-region differences in interpretation just as there are State-to-State differences.

The TF suggests that in the final rule EPA clarify that the petitions be sent to the “Regional Administrator” or the Director of the authorized State.”

To the TF, a “renewal” of a variance or non-waste determination implies a full application to be submitted by a generator and full review of the information by the regulatory agency, coupled with notifications to the media, public comment, and possible hearings. Instead of “renewal,” the TF suggests a requirement for generators to “recertify” that they continue to meet the conditions of a previously approved variance or non-waste determination on an annual or biennial basis.

Once again, the TF understands EPA’s goal to ensure national consistency with variance and non-waste determinations; however, some TF members do not support the proposed requirement for States to “share copies of the variance and non-waste determination petitions and tentative decisions” with EPA for comment. If the State is authorized to administer the RCRA Subtitle C Program, then the State bears the responsibility to issue these decisions. EPA’s role in these cases is to conduct their reviews through the oversight process.

#### **Preamble Section XII: Request for Comment on Re-Manufacturing Exclusion**

The TF supports legitimate recycling/reclamation as a way to reduce waste and conserve resources, but the preamble only describes EPA’s concept behind this exclusion and does not provide actual rule text for evaluation. While the TF agrees with the concept of a remanufacturing exclusion, we are not prepared to provide extensive comments on EPA’s proposal with no rule text to evaluate. Additionally, the TF does not believe this exclusion should be considered in the same proposal as the already complicated DSW rule.

The TF has the concern that even though these would be higher purity and higher value solvents, they are spent and are not a useable product. Any facility that would want to recycle these solvents will have to incur the cost of establishing a recycling process to recover the solvents along with the manpower to operate the recycling system. For these reasons, there will potentially be an incentive to mismanage the solvents or to make the recycling of the solvents secondary to the primary manufacturing of the receiving facility.

The TF believes the term “continuing use” to refer to the post-remanufacturing use of a reclaimed material will cause confusion with the established term “continued use.” The TF suggests using another term such as “subsequent use” in its place in order to avoid confusion.

We also believe the rule should specify that the solvents must be used by the company that actually remanufactures the solvent, and that the exclusion would not apply to commercial solvent recyclers. Without such clarification, the TF believes the proposal would otherwise be too much like the transfer-based exclusion, which the TF does not support, and would also create a two-tiered regulatory scheme for the same activity, one for solvent remanufacturers and another one for commercial solvent recyclers.

### **Preamble Section XIII: Request for Comment on Revisions to Other Recycling Exclusions and Exemptions**

Most TF members support the application of the legitimacy criteria to the current regulatory exclusions with exceptions (lead-acid batteries, circuit boards, scrap metal, etc.). These members believe codifying the legitimacy criteria for these exclusions formalizes years of EPA guidance, thus giving States and industry a definitive standard for evaluating legitimate recycling. These TF members do not believe industries operating under the current regulatory exclusions should have any problems with the 260.43 standards if their recycling is truly legitimate.

Most TF members also support making *initial* notification a condition of the current exemptions with exceptions. Currently, facilities acting under these exclusions are not required to notify unless these exclusions are occurring at facilities that are otherwise regulated, or States learn of the facility through citizen complaints or other means. Notifications will allow States to periodically evaluate these facilities to ensure they are meeting all the terms of their exclusions. Some TF members do not support codifying the legitimate recycling standard, additional recordkeeping requirements in the speculative accumulation standard, the contained standard, or the notification provision for the 32 previously excluded or exempt wastes. They believe the exclusions for these wastes have been codified for a number of years and have operated without any additional requirements. These members believe that if EPA finalizes this proposal there will be an undue burden to the regulated community as well as to the States.

The TF has the same concerns with the definition of “contained” applied to these exclusions as was discussed above in the discussion of the under the control of the generator exclusion.

### **ASTSWMO Program Information Management (PIM) Task Force (TF) DSW Comments**

#### **Initial and Biennial Notification using the HSM Addendum by the facilities operating under the 32 exclusions and exemptions**

The PIM TF recognizes that knowing who these facilities are is potentially useful to the States and EPA because these sites would be identified and the notification requirement would provide additional enforcement avenues. However, the biennial notification/reporting requirement being proposed in this 2011 version of the DSW rule is significantly more stringent than the current requirement applied to all other RCRA regulated facilities (except LQGs and Treatment, Storage, and Disposal Facilities [TSDFs], who must file a Biennial Report (BR) and therefore are re-notifying as part of that). Although it would also potentially create additional burden for implementers, some States might be more interested in a regulation change for a re-notification requirement for the existing regulated universes before requiring exempt and excluded activities to be tracked so heavily. The PIM TF proposes that after the initial notification of excluded/exempt activity, to instead make the requirement to re-notify be necessary *when* key pieces of information change, such as facility name; owner/operator; or the type of regulated activities.

Requiring the HSM Addendum to be completed is burdensome for the facilities under an exemption/exclusion. While they know that the material in question is excluded or exempt, they may not be in the habit of quantifying it or determining what the waste code(s) would be if it was managed as hazardous waste. Therefore the estimations they provide on the Addendum would be guesstimates at best, especially for the initial submittal. The analyses drawn from these estimates would probably not be good enough to base programmatic decisions upon.

If the facilities do not file an Addendum but only submit a Site ID form, then the form would have to be modified to add a section for tracking the types of exemptions or exclusions they are operating under. Considering the number of changes that would have to occur when a new field is added, it is doubtful this could be ready in time for the proposed rule's December 2012 effective date. In addition, EPA would have to allow time for States to change their own databases and programs if they translate rather than do direct RCRAInfo entry. Based on past experience, it takes more than a year for States to make changes in their State-specific databases due to resource constraints. EPA should address how they will account for any differences between the effective date of the rule and when information systems can and/or will be adapted for this new requirement.

Because it is difficult to estimate the number of facilities operating under the exclusions/exemptions, the impact on the implementers of the notification program is uncertain. Most implementers are States, who are already implementing the RCRA program with diminished resources. Having a biennial re-notification that coincides with the BR submittal date could be a significant strain in States where the BR person also processes the notifications. If only initial notifications were required as well as updates (randomly received), then the States would find it easier to fold them into the current work flow.

If EPA can rejuvenate the past plans for My RCRA ID, a web site where the public could apply for an ID or submit a subsequent notification, it would reduce the implementer's burden somewhat in the sense that the implementer would not have to key in the information. The software would prevent common errors such as omission of required information. However, the implementer still has to review the submittal, communicate with the facility contact about any issues found, and send to the facility an acknowledgment of the processing (optional but done by many States). Note that some States may have fields in their notification form that are not tracked in RCRAInfo and therefore they could not use My RCRA ID for their regulated facilities.

**Require notification for a new exclusion for high value solvents being sent for re-manufacturing into similar high value solvents.**

Unlike the notification requirement for facilities operating under the 32 exclusions or exemptions, adopting this rule is optional because it is less stringent. However, the comments about the notification and addendum are the same as above.

### **Regulate HSM sent off-site for recycling as HW; use notification in lieu of BR.**

Any hazardous waste shipped off-site should be reported on the BR, not on the Addendum. The shipment information needs to be together in one database table for analysis purposes. Opening the door wider of not having hazardous waste on the BR (as has happened with generation data for Subpart K facilities) is not a good idea. The level of detail and the analysis possibilities in the BR are greater than with the Addendum.

However, we do not know how many of these facilities would not be a LQG or TSD and would therefore not file a BR. Most of the HSM notifiers so far are LQGs. We do not know if this rule change would result in new LQGs.

Also in this case, the State can choose whether to adopt this or stick with Subtitle C if they have not already adopted the 2008 DSW. It would be confusing to have a patchwork of some States requiring HSM to be reported on the BR and others on the Addendum. If materials are HW, then HW should be reported on the BR and be nationally consistent.

However, as discussed above, this is another area in which State resources could become a potential concern. States that manage and maintain alternate reporting cycles and requirements in their own internal systems would likely need to change and adapt those systems in order to be able to collect additional and/or different information than the typical BR data so it could be submitted to EPA. Depending on the extent of those changes, this could become an additional resource strain as well as a timeliness issue for implementation.

### **Question 3 on the Addendum (regarding whether a facility has financial assurance) may also be deleted.**

The EPA ORCR staff DSW paper written for the RCRAInfo community says if the proposed changes are adopted, the question about whether the facility has Financial Assurance could possibly be removed from the Addendum. During the discussion of the 2008 DSW rule and the changes to the Site ID form, some States were adamant that they wanted to have this question answered on the Addendum.

### **Alternative HSM manifest**

Under the alternative manifest system proposed in the rule, the same requirements as a hazardous waste manifest would apply but the manifests instead would be labeled "hazardous recyclable materials" manifest. This would add confusion and additional effort to the completion and processing of shipment documentation. A better route would be to use text or codes on the existing uniform Hazardous Waste manifest form to identify the material as HSM.

### **Administrative Corrections**

After a thorough review of the proposed rule, we believe the following administrative corrections are warranted, none of which appear to have any regulatory impact.

1. The definition of “hazardous secondary material” contains a reference to 261.2(a)(2)(ii), which is proposed to be deleted.
2. The definition of “intermediate facility” is no longer needed.
3. Section 261.1(c)(4) references both 261.2(a)(2)(ii) and 261.4(a)(24), both of which are proposed to be deleted.
4. Section 261.2(c)(3) references 261.2(a)(2)(ii), 261.4(a)(24), and 261.4(a)(25), each of which is proposed to be deleted.