

Overview of the Definition of Solid Waste Proposed Rule

*Presented by Mary Beth Sheridan
at the Georgia Environmental Conference*

August 21, 2014

2011 DSW Proposed Rule

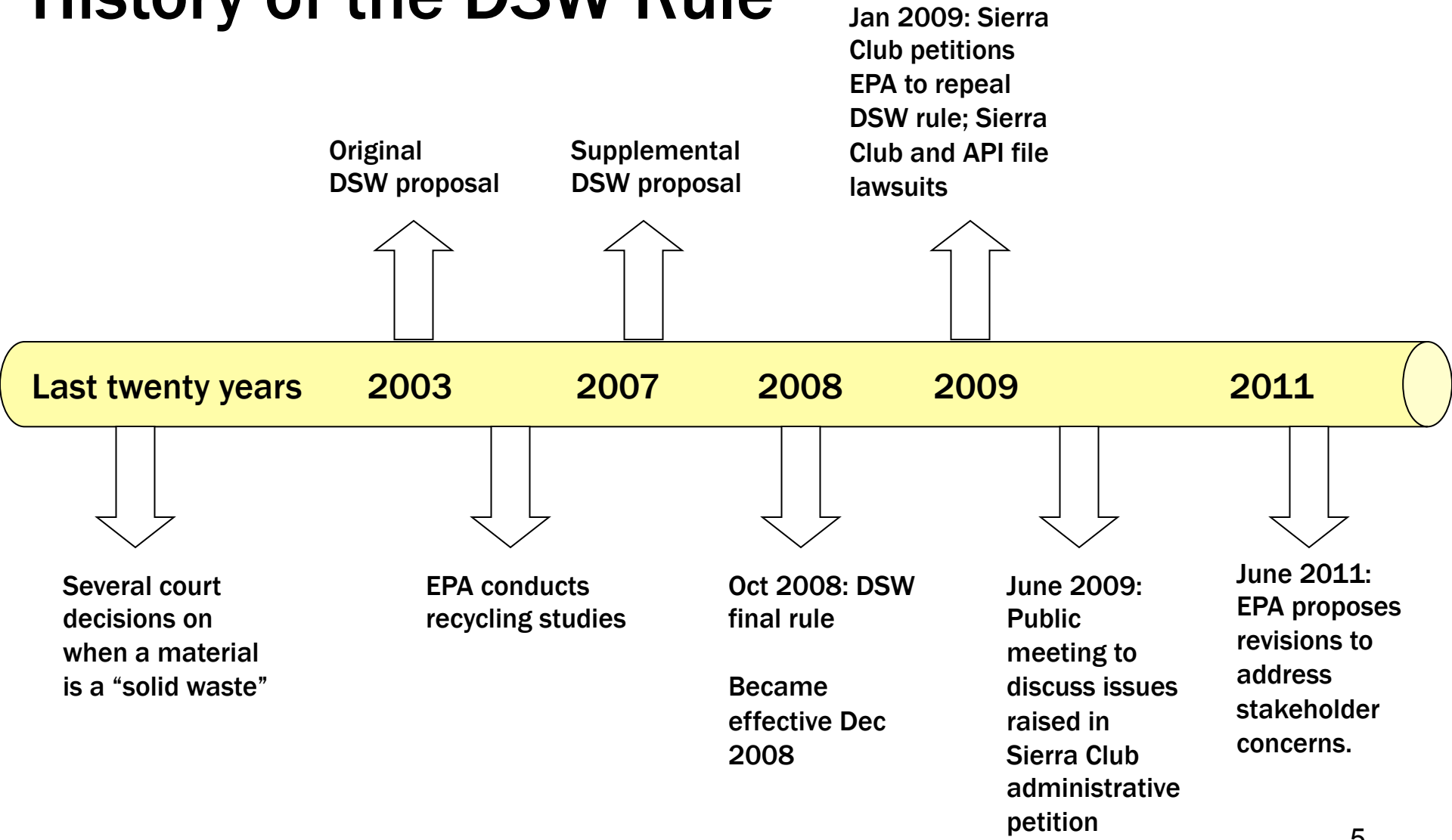
- In late June 2011, the EPA Administrator signed a rule proposing new safeguards for recycling hazardous materials to protect public health and the environment. The rule was published July 22, 2011 (76 FR 44094).
- The proposal modifies EPA's 2008 Definition of Solid Waste (DSW) rule, which revised hazardous waste regulations to encourage recycling of hazardous materials.
- The proposal will improve accountability and oversight of hazardous materials recycling, while allowing for important flexibilities that will promote its economic and environmental benefits.

Background of the DSW Rule

- Under the Resource Conservation and Recovery Act (RCRA), EPA has the authority to regulate solid wastes. RCRA defines solid waste as:

“...any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material*... resulting from industrial, commercial, mining, and agricultural operations, and from community activities...” (RCRA Section 1004 (27) (emphasis added)).
- A key issue since the 1980’s is when recycling or reuse constitutes “discard” and therefore is potentially subject to RCRA regulation.
- Several court decisions and hundreds of public comments have provided direction about when recycling of hazardous secondary materials resembles manufacturing and when it resembles discard.

History of the DSW Rule



Status of the 2008 DSW Rule

- The 2008 DSW final rule was published on October 30, 2008 (73 FR 64668) and became effective on December 29, 2008.
- The rule remains and will remain effective as part of the federal program throughout this current rulemaking process.
- The rule is currently effective in six states (AK, IA, ID, IL, NJ, and PA), in many territories, and on tribal lands.

Improving Safeguards

Replacing the transfer-based exclusion with alternate hazardous recyclable materials standard.

Adding a regulatory definition of “contained” and additional recordkeeping requirements for generator-controlled exclusion.

Making all four legitimacy factors mandatory and requiring documentation.

Applying the regulatory definition of legitimate recycling to all hazardous waste and hazardous secondary material recycling.

Requesting comment on applying the contained standard, notification, and recordkeeping for speculative accumulation to existing recycling exclusions.

Encouraging Recycling

Alternative standard allows generators longer accumulation time (one year) if there is a reclamation plan in place.

Retaining the generator-controlled exclusion for recycling performed on-site, at the same company, or under certain tolling agreements.

Providing a petition process for instances where legitimacy factors are not met, but recycling is still legitimate.

Requesting comment on a targeted exclusion for higher-value hazardous solvents which are re-manufactured into commercial-grade products.

Replacing Transfer-Based Exclusion with Alternative Subtitle C Regulation for Hazardous Recyclable Materials

- EPA is proposing to replace the exclusion for hazardous secondary materials transferred for the purpose of reclamation with an alternative Subtitle C regulation for hazardous recyclable materials.
- Under alternative requirements, hazardous recyclable materials are generally managed according to the current RCRA Subtitle C requirements, including manifesting and hazardous waste permits for storage.

Generator-controlled Exclusion

- EPA is proposing to retain the generator-controlled exclusion for hazardous secondary materials reclaimed by the generator:
 - On-site
 - Within the same company
 - Within certain tolling agreements

- EPA is also proposing four changes to the generator-controlled exclusion:
 1. Revising the “contained” standard
 2. Making notification a condition of the exclusion
 3. Adding recordkeeping requirements for tolling
 4. Documenting compliance with speculative accumulation storage limits

Legitimate Recycling Provision

- EPA has long distinguished between sham recycling and legitimate recycling (or true recycling) for the purpose of hazardous waste recycling regulations.
- EPA's guidance and preambles have discussed the need to ensure that recycling is legitimate since 1985.
- EPA promulgated a regulatory definition of legitimate recycling as part of the 2008 final rule for the 2008 reclamation exclusions.

- The definition of legitimate recycling consists of four legitimacy factors:
 1. Materials must provide a useful contribution to the recycling process or to a product or intermediate.
 2. Recycling must produce a valuable product or intermediate.
 3. Materials must be managed as valuable commodities.
 4. Products of recycling must contain levels of hazardous constituents comparable to those in analogous products.

EPA is proposing five main changes regarding the definition of legitimate recycling:

- (1)** Applying the legitimacy provision to all hazardous secondary material and hazardous waste recycling
- (2)** Making all four factors in the legitimacy provision mandatory
- (3)** Proposing new text be added to legitimacy factor 3 language
- (4)** Proposing new text, including other ways to demonstrate comparability, to legitimacy factor 4 language
- (5)** Proposing recyclers document legitimacy determinations

Variations and Non-waste Determinations

- We are proposing five changes to the variations from the definition of solid waste and non-waste determinations in 40 CFR 260.31(c), 40 CFR 260.33 and 40 CFR 260.34:
 1. Require facilities to re-notify every other year using the Site ID form;
 2. Require facilities that receive a variance to re-apply in the event of a change in circumstances that affects how the material meets the variance criteria;
 3. Require that all of the criteria for the partial reclamation variance must be reviewed and met for a variance to be granted;
 4. Require petitioners for non-waste determinations to explain why their hazardous secondary material cannot meet, or should not have to meet, an existing DSW exclusion; and
 5. Designate the Regional Administrator as the EPA recipient of petitions for variance and non-waste determinations in non-authorized States.

Remanufacturing Exclusion

- EPA is proposing to exclude high-value solvents used for reacting, extracting, blending, or purifying chemicals in the pharmaceutical, organic chemical, plastics and resins, or the paint and coatings sector.
 - Studies by EPA's Green Engineering Program identified these industry sectors and reuse of these solvents as chemical manufacturing and processing aids as a potential opportunity to obtain large environmental benefits.
 - The solvents identified as possible candidates for a remanufacturing exclusion are highly energy-intensive and carbon-intensive at their creation and destruction and are used in very high volumes.
 - It takes significantly less energy to bring solvents used as chemical manufacturing aids back to commercial grade than to bring solvents used as cleaners and degreasers back to functionality.
 - More environmental benefits will be obtained by maximizing the number of times a high-purity grade chemical product can be used as an aid to chemical manufacturing and processing.

- Conditions of the remanufacturing exclusion:
 - The hazardous secondary material must be one 18 solvents that originated and is remanufactured for use in one of four industry sectors for reacting, extracting, blending, and purifying purposes. (The solvent cannot be used for cleaning or degreasing.)
 - The generator and remanufacturer must:
 - Notify their regulatory authority prior to using the exclusion and every other year thereafter.
 - Develop a remanufacturing plan.
 - Maintain records of shipments and confirmations of receipt.
 - Store the spent solvents in tanks or containers that meet the same technical standards as those in 40 CFR 264 Subparts I and J.
 - Comply with air emission standards (NESHAP and 40 CFR 264 subparts AA, BB, and CC).
 - Meet speculative accumulation storage limits.
- We also request comment on other opportunities for remanufacturing of hazardous secondary materials.

Other Recycling Exclusions and Exemptions

- EPA is requesting comment on adding notification, containment, and recordkeeping for speculative accumulation to other (pre-2008) exclusions and exemptions from hazardous waste regulations.
 - We analyzed 218 recycling damage cases documented for the 2008 DSW final rule and determined that over half of these damage cases were probably associated with an existing recycling exclusion or exemption from the hazardous waste regulations.
- We are **not** reopening comment on any substantive provisions of the regulatory exclusions or exemptions.

Environmental Justice Analysis

- In 2009, EPA agreed to perform an expanded environmental justice analysis in response to concerns about the 2008 DSW final rule's potential impact on communities. EPA developed an innovative methodology that incorporated sound science and community engagement.
- The Agency identified potential hazards to communities from the recycling of hazardous secondary materials and from the facilities that may take advantage of the 2008 DSW rule.
- EPA then analyzed the demographics of the communities surrounding the facilities.
- EPA determined that certain population groups could be disproportionately adversely impacted under the 2008 DSW rule.
- EPA incorporated these considerations in the revised 2011 proposed rule to mitigate these potential adverse impacts, as allowed under applicable authorities.

Next Steps on the Proposed Rule

- The proposed rule was published in the Federal Register on July 22, 2011 (76 FR 44094) and the public comment period ended October 20, 2011.
- The rule is currently undergoing OMB review.
- The latest information on DSW rulemaking can be found at:
<http://www.epa.gov/epawaste/hazard/dsw/rulemaking.htm>
- For more information, please contact:

Mary Beth Sheridan, 703-308-4941, Sheridan.marybeth@epa.gov
or Tracy Atagi, 703-308-8672, Atagi.tracy@epa.gov