

**RULES
OF
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
SOLID WASTE MANAGEMENT**

**CHAPTER 0400-12-01
HAZARDOUS WASTE MANAGEMENT**

TABLE OF CONTENTS

0400-12-01-.01	Hazardous Waste Management System: General	0400-12-01-.07	Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities
0400-12-01-.02	Identification and Listing of Hazardous Waste	0400-12-01-.08	Fee System for Transporters, Storers, Treaters, Disposers, and Certain
0400-12-01-.03	Notification Requirements and Standards Applicable to Generators of Hazardous Wastes		Generators of Hazardous Wastes and for Certain Used Oil Facilities or Transporters
0400-12-01-.04	Requirements Applicable to Transfer Facilities and Permit Requirements and Standards Applicable to Transporters of Hazardous Waste	0400-12-01-.09	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
0400-12-01-.05	Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities	0400-12-01-.10	Land Disposal Restrictions
		0400-12-01-.11	Standards for the Management of Used Oil
0400-12-01-.06	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	0400-12-01-.12	Standards for Universal Waste Management

0400-12-01-.01 HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL.

(1) General

(a) Purpose, Scope, and Applicability

This rule provides definitions of terms, general standards and procedures, and overview information applicable to these rules.

(b) Use of Number and Gender

As used in these rules:

1. Words in the masculine gender also include the feminine and neuter genders; and
2. Words in the singular include the plural; and
3. Words in the plural include the singular.

(c) Rule Structure

These rules are organized, numbered, and referenced according to the following outline form:

(1) Paragraph

(a) Subparagraph

1. Part

(Rule 0400-12-01-.01, continued)

(i) Subpart

(l) Item

I. Subitem

A. Section

(A) Subsection

(2) Definitions and References

(a) Definitions

When used in Rules 0400-12-01-.01 through .12, the following terms have the meanings given below unless otherwise specified:

"Above ground tank" means a device meeting the definition of "tank" in this subparagraph and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Accumulated speculatively" means accumulated speculatively as defined in subpart (1)(a)3(viii) of Rule 0400-12-01-.02.

"Act" means the Tennessee Hazardous Waste Management Act, as amended, Tennessee Code Annotated (T.C.A.) §§ 68-212-101 et seq.

"Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Commissioner receives certification of final closure.

"Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the date one or more of the hazardous wastes handled by the facility first became subject to regulation under rules promulgated under the Act and which is not a closed portion. (See also "closed portion" and "inactive portion".)

"Administrator" means the Administrator of the Environmental Protection Agency, or his designee.

"Analogous raw material" means a material for which a hazardous secondary material substitutes and which serves the same function and has similar physical and chemical properties as the hazardous secondary material.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

"Application" means the EPA standards national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in approved States, including any approved modifications or revisions. Application also includes the information required by the Commissioner under subparagraph (5)(a) through paragraph (6) of Rule 0400-12-01-.07 (contents of Part B of the hazardous waste management permit application).

(Rule 0400-12-01-.01, continued)

"Approved program or approved State" means a State which has been approved or authorized by EPA under 40 CFR Part 271.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

"ASTM" means the American Society for Testing and Materials.

"Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Board" means the Underground Storage Tanks and Solid Waste Disposal Control Board established by T.C.A. § 68-211-111.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

1.
 - (i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and
 - (ii) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and
 - (iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and
 - (iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit (examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or
2. The unit is one which the Commissioner has determined, on a case-by-case basis, to be a boiler, after considering the standards in subparagraph (4)(d) of this rule.

(Rule 0400-12-01-.01, continued)

"By-product" means by-product as defined in subpart (1)(a)3(iii) of Rule 0400-12-01-.02.

"Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (e.g., power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Cathode ray tube" or CRT means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"Certification" means a statement of professional opinion based upon knowledge and belief.

"CFR" means the Code of Federal Regulations.

"Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)

"Commissioner" means the Commissioner of the Tennessee Department of Environment and Conservation (formerly the Tennessee Department of Health and Environment) or his authorized representative.

"Component" means any constituent part of a unit or any group of constituent parts of a unit assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple) when used in Rule 0400-12-01-.07 and, when used otherwise in these rules, means either the tank or ancillary equipment of a tank system.

"Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

"Conglomerate Waste Stream" means the mixture of individual wastewater streams at the point of entry into either the headworks of an on-site wastewater treatment plant or the sewer system that leads to a publicly owned treatment works (POTW).

"Contained" means held in a unit (including a land-based unit as defined in this subparagraph) that meets the following criteria:

1. The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(Rule 0400-12-01-.01, continued)

2. The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and
3. The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(Note: As used in this definition, "compatible" means that the commingling with other hazardous secondary materials will not produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases; or that the placement in a particular unit will not cause detectable corrosion or decay of containment materials (e.g., container inner liners or tank walls.)

4. Hazardous secondary materials in units that meet the applicable requirements of Rule 0400-12-01-.05 or Rule 0400-12-01-.06 are presumptively contained.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Rule 0400-12-01-.06(33) and 0400-12-01-.05(30).

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten public health or the environment.

"Corrective action management unit" or "CAMU" means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility.

"Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

"CRT exporter" means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

"CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

"CRT processing" means conducting all of the following activities:

1. Receiving broken or intact CRTs; and

(Rule 0400-12-01-.01, continued)

2. Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and
3. Sorting or otherwise managing glass removed from CRT monitors.

"CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Act or Federal Water Pollution Control Act amendments of 1972) Pub. L. 92-500, as amended by Publ. L. 92-217 and Publ. L. 95-576; 33 U.S.C. 1251 et seq.

"Department" means the Tennessee Department of Environment and Conservation (formerly Tennessee Department of Health and Environment).

"Designated facility" means:

1. A hazardous waste treatment, storage, or disposal facility which:
 - (i) Has received a permit (or interim status) in accordance with the requirements of Rule 0400-12-01-.07; or
 - (ii) Has received a permit (or interim status) from a State authorized in accordance with 40 CFR 271; or
 - (iii) Is regulated under subpart (1)(f)3(ii) of Rule 0400-12-01-.02 or paragraph (6) of Rule 0400-12-01-.09; and
 - (iv) Has been designated on the manifest by the generator pursuant to subparagraph (3)(a) of Rule 0400-12-01-.03.
2. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with part (5)(c)6 of Rule 0400-12-01-.05 or Rule 0400-12-01-.06.
3. If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in parts (2)(d)1 and 3 and (3)(d)1 and 3 of Rule 0400-12-01-.12. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

"Dioxins and furans" (D/F) means tetra-, penta-, hexa-, hepta-, and octa-chlorinated dibenzo dioxins and furans.

"Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land, water or air so that such

(Rule 0400-12-01-.01, continued)

hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

"Division Director" or "Director" means the Director of the Division of Solid Waste Management of the Department, or his designee. This person also serves as the Technical Secretary to the Board, and functions as the chief of staff to both the Commissioner and the Board in matters relating to these rules and their implementation.

"DOT" means the U.S. Department of Transportation.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"Electronic manifest" or "e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

"Electronic manifest system" or "e-Manifest system" means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

"Elementary neutralization unit" means a device which:

1. Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Rule 0400-12-01-.02(3)(c), or they are listed in Rule 0400-12-01-.02(4) only for this reason; and
2. Meets the definition of tank, tank system, container, transport vehicle, or vessel in this subparagraph.

"Emergency permit" means a hazardous waste management permit issued in accordance with Rule 0400-12-01-.07(1)(d).

"EPA" means the U.S. Environmental Protection Agency.

"EPA Identification Number" is synonymous with "Installation Identification Number."

"EPA region" means the states and territories found in any one of the following ten regions:

Region I - Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

Region II - New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(Rule 0400-12-01-.01, continued)

Region III - Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

Region IV - Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

Region V - Minnesota, Wisconsin, Illinois, Michigan, Indiana, and Ohio.

Region VI - New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

Region VII - Nebraska, Kansas, Missouri, and Iowa.

Region VIII - Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

Region IX - California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.

Region X - Washington, Oregon, Idaho, and Alaska.

"Equivalent method" means any testing or analytical method approved by the Commissioner under Rule 0400-12-01-.01(3).

"Existing hazardous waste management facility" or "existing facility" means a facility which was in operation, or for which construction had commenced, on or before the date on which one or more of the hazardous wastes handled or to be handled by the facility first became subject to regulation under rules promulgated under the Act. Construction has commenced if:

1. The owner or operator has obtained all necessary Federal, State, and local preconstruction approvals or permits; and either
2.
 - (i) A continuous physical, on-site construction program has begun; or
 - (ii) The owner or operator has entered into contractual obligations -- which cannot be canceled or modified without substantial loss -- for construction of the facility to be completed within a reasonable time.

"Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially

(Rule 0400-12-01-.01, continued)

explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

"Facility" means:

1. All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).
2. For the purpose of implementing corrective action under Rule 0400-12-01-.06(6)(I), all contiguous property under the control of the owner or operator seeking a permit under the Tennessee Hazardous Waste Management Act, T.C.A. §§ 68-212-101 et seq. This definition also applies to facilities implementing corrective action under T.C.A. § 68-212-111.
3. Notwithstanding part 2 of this definition, a remediation waste management site is not a facility that is subject to Rule 0400-12-01-.06(6)(I), but is subject to corrective action requirements if the site is located within such a facility.

"Facility mailing list" means the mailing list for a facility maintained by the Department in accordance with Rule 0400-12-01-.07(7)(e)3(i)(V).

"Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

"Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

(Rule 0400-12-01-.01, continued)

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136-136y).

"Final authorization" means approval by EPA of a State program which has met the requirements of Section 3006(b) of RCRA and the applicable requirements of 40 CFR Part 271, Subpart A.

"Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Rules 0400-12-01-.05 and 0400-12-01-.06 are no longer conducted at the facility unless subject to the provisions in Rule 0400-12-01-.03(4)(e).

"Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

"Functionally equivalent component" means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

"Furans" – see "Dioxins and furans".

"Generation" means the act or process of producing hazardous wastes.

"Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule 0400-12-01-.02 or whose act first causes a hazardous waste to become subject to regulation.

"Ground water" means water below the land surface in a zone of saturation.

"Hazardous secondary material" means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under Rule 0400-12-01-.02.

"Hazardous secondary material acceptance plan" means the plan used by the verified reclaimer or the verified intermediate facility that identifies the physical and chemical data necessary to determine if a hazardous secondary material is being legitimately reclaimed.

"Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this definition, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of subpart (1)(d)1(xxiii) of Rule 0400-12-01-.02, a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

"Hazardous waste" means a hazardous waste as defined in Rule 0400-12-01-.02(1)(c).

(Rule 0400-12-01-.01, continued)

"Hazardous waste code" means the code assigned by the Department to each hazardous waste listed in Rule 0400-12-01-.02(4) and to each characteristic identified in Rule 0400-12-01-.02(3), and any derivation of such codes which may be assigned by the Department to an individual waste or class of wastes.

"Hazardous waste constituent" means a constituent that caused the Board to list the hazardous waste in Rule 0400-12-01-.02(4), or a constituent listed in Table 1 of Rule 0400-12-01-.02(3)(e).

"Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"HWM facility" means Hazardous Waste Management facility.

"Inactive portion" means that portion of a facility which is not operated after the date one or more of the hazardous wastes handled by the facility first became subject to regulation under rules promulgated under the Act. (See also "active portion" and "closed portion".)

"Incinerator" means any enclosed device that:

1. Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or
2. Meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a hazardous waste which is unsuitable for:

1. Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or
2. Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(See Appendix V at Rule 0400-12-01-.05(53) and at Rule 0400-12-01-.06(57) for examples.)

"Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

1. Cement kilns

(Rule 0400-12-01-.01, continued)

2. Lime kilns
3. Aggregate kilns
4. Phosphate kilns
5. Coke ovens
6. Blast furnaces
7. Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces)
8. Titanium dioxide chloride process oxidation reactors
9. Methane reforming furnaces
10. Pulping liquor recovery furnaces
11. Combustion devices used in the recovery of sulfur values from spent sulfuric acid
12. Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.
13. Such other devices as the Commissioner may, after notice and comment, add to this list on the basis of one or more of the following factors:
 - (i) The design and use of the device primarily to accomplish recovery of material products;
 - (ii) The use of the device to burn or reduce raw materials to make a material product;
 - (iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
 - (iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
 - (v) The use of the device in common industrial practice to produce a material product; and
 - (vi) Other factors, as appropriate.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(Rule 0400-12-01-.01, continued)

"Inground tank" means a device meeting the definition of "tank" in this subparagraph whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"Injection well" means a well into which fluids are injected. "Class I" injection wells include wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste, other than Class IV wells. "Class IV" injection wells include wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to dispose of hazardous wastes into or above a formation which within one quarter mile of the well contains an underground source of drinking water. (See also "underground injection".)

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

"In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

"Installation identification number" ("EPA Identification Number") means the number assigned to each generator, transporter, and treatment, storage, or disposal facility by the Department or EPA. For generators and facilities in this state, and for transporters who pick up hazardous waste from, or deliver hazardous waste to, locations in this state, references in these rules to their installation identification number shall mean the number assigned by the Department. For other generators, transporters, and facilities, such references shall mean the number assigned by EPA.

"Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

"Interim authorization" means approval by EPA of State hazardous waste program which has met the requirements of Section 3006(g)(2) of RCRA and applicable requirements of 40 CFR Part 271, Subpart B.

"Intermediate" when used in the context of a chemical reaction means a chemical substance either formed by chemical reaction or is purchased and quantitatively introduced in a chemical reaction to support the formation of a product. Multiple intermediates may be associated with a chemical reaction.

"Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.

"International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

"Lamp," also referred to as "universal waste lamp," is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(Rule 0400-12-01-.01, continued)

"Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

"Land Disposal" when used with respect to a specified hazardous waste, shall be deemed to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

"Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Large Quantity Handler of Universal Waste" means a universal waste handler (as defined in this subparagraph) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, thermostats, or lamps calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

"Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

"Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

"Major facility" means any facility or activity classified as such by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director.

"Management" or "waste management" or "hazardous waste management" means the orderly control of storage, transportation, treatment, and disposal of hazardous waste.

"Manifest" means the shipping document EPA Form 8700-22 (including if necessary, EPA Form 8700-22A), or the electronic manifest originated and signed in accordance with the applicable requirements of Rules 0400-12-01-.03 through 0400-12-01-.06.

(Rule 0400-12-01-.01, continued)

"Manifest tracking number" means the alphanumeric identification number (i.e., a unique three letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the Manifest by a registered source.

"Mercury-containing equipment" means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

"Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

"Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR part 146 (as that Federal Regulation exists on the effective date of these rules), containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under Rule 0400-12-01-.07(1)(g), or staging pile.

"Movement" means that hazardous waste transported to a facility in an individual vehicle.

"National Pollutant Discharge Elimination System" means the national program for issuing, modifying, revoking and reissuing, termination, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after October 31, 1980. (See also "existing hazardous waste management facility".)

"New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of Rules 0400-12-01-.05(10)(d)7(ii) and .06(10)(d)7(ii), a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system".)

(Rule 0400-12-01-.01, continued)

"No free liquids," as used in subparts (1)(d)1(xxvi) and (1)(d)2(xviii) of Rule 0400-12-01-.02, means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference in subparagraph (b) of this paragraph, and that there is no free liquid in the container holding the wipes.

"NPDES" means National Pollutant Discharge Elimination System.

"Off-site" means any site which is not on-site.

"On ground tank" means a device meeting the definition of "tank" in this subparagraph and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

"Open burning" means the combustion of any material without the following characteristics:

1. Control of combustion air to maintain adequate temperature for efficient combustion,
2. Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
3. Control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment".)

"Operator" means the person responsible for the overall operation of a facility.

"Owner" means the person who owns a facility or part of a facility.

"Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Rules 0400-12-01-.05 and 0400-12-01-.06 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

"Permit" means an authorization, license, or equivalent control document issued by the Commissioner to implement the requirements of Rule 0400-12-01-.07. Permit includes permit-by-rule (Rule 0400-12-01-.07(1)(c)), and emergency permit (Rule 0400-12-01-.07(1)(d)). Permit does not include interim status (Rule 0400-12-01-.07(3)), or any permit which has not been the subject of final agency action, such as a draft permit or a proposed permit.

"Permit-by-rule" means a provision of these regulations stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

(Rule 0400-12-01-.01, continued)

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, and governmental agency of this state and any department, agency, or instrumentality of the executive, legislative, and judicial branches of the federal government.

"Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Rules 0400-12-01-.05 or 0400-12-01-.06.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

1. Is a new animal drug under FFDCA section 201(w), or
2. Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
3. Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by parts 1 or 2 of this definition.

"Physical construction" means excavation, movement of earth, erection of forms or structures, or similar activity to prepare an HWM facility to accept hazardous waste.

"Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

"Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Pollution Prevention" means source reduction as defined under the Pollution Prevention Act (42 U.S.C. 13101-13109). The definition is as follows:

1. Source reduction is any practice that:
 - (i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment or disposal; and
 - (ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.
2. The term source reduction includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitutions of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(Rule 0400-12-01-.01, continued)

3. The term source reduction does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

"PSC" which means the Tennessee Public Service Commission, was abolished. Pertinent functions are now handled by the "Tennessee Regulatory Commission."

"Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the "State" or a "municipality" (as defined by Section 502(4) of CWA). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

"Qualified Ground-Water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding ground-water monitoring and contaminant fate and transport.

"RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609 and Pub. L. 96-482, 42 U.S.C. 6901 et seq.)

"Reclaimed" means reclaimed as defined in subpart (1)(a)3(iv) of Rule 0400-12-01-.02.

"Recycled" means recycled as defined in subpart (1)(a)3(vii) of Rule 0400-12-01-.02.

"Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located, or his designee.

"Registered engineer" or "registered professional engineer" refers to a person authorized to perform engineering in Tennessee pursuant to Tennessee Code Annotated, Title 62, Chapter 2.

"Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

"Remedial Action Plan (RAP)" means a special form of RCRA permit that a facility owner or operator may obtain instead of a permit issued under paragraphs (1), (2), and (4)-(9) of Rule 0400-12-01-.07, to authorize the treatment, storage or disposal of hazardous remediation waste (as defined in this subparagraph) at a remediation waste management site.

"Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, that are managed for implementing cleanup.

"Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation

(Rule 0400-12-01-.01, continued)

waste management site is not a facility that is subject to corrective action under Rule 0400-12-01-.06(6)(l), but is subject to corrective action requirements if the site is located in such a facility.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit (1) from which all or substantially all of the waste is removed, and (2) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or State approved corrective action.

"Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act and regulations.

"SDWA" means the Safe Drinking Water Act (Pub. L. 95-523, as amended by Pub. L. 95-1900; 42 U.S.C. 3001 et seq.)

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

"Small Quantity Generator" means a generator who generates less than 1000 kg of hazardous waste in a calendar month.

"Small Quantity Handler of Universal Waste" means a universal waste handler (as defined in this subparagraph) who does not accumulate more than 5,000 kilograms total of universal waste (batteries, pesticides, thermostats, or lamps calculated collectively) at any time.

"Solid waste" means a waste as defined in Rule 0400-12-01-.02(1)(b).

"Solvent-contaminated wipe" means:

(Rule 0400-12-01-.01, continued)

1. A wipe that, after use or after cleaning up a spill, either:
 - (i) Contains one or more of the F001 through F005 solvents listed in subparagraph (4)(b) of Rule 0400-12-01-.02 or the corresponding P- or U-listed solvents found in subparagraph (4)(d) of Rule 0400-12-01-.02;
 - (ii) Exhibits a hazardous characteristic found in paragraph (3) of Rule 0400-12-01-.02 when that characteristic results from a solvent listed in paragraph (4) of Rule 0400-12-01-.02; and/or
 - (iii) Exhibits only the hazardous waste characteristic of ignitability found in subparagraph (3)(b) of Rule 0400-12-01-.02 due to the presence of one or more solvents that are not listed in paragraph (4) of Rule 0400-12-01-.02.
2. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at subparts (1)(d)1(xxvi) and (1)(d)2(xviii) of Rule 0400-12-01-.02.

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

"Spent material" means spent material as defined in subpart (1)(a)3(i) of Rule 0400-12-01-.02.

"Staging pile" means an accumulation of solid, non-flowing remediation waste (as defined in this subparagraph) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Director according to the requirements of Rule 0400-12-01-.06(22)(e).

"State" means the State of Tennessee.

"State/EPA Agreement" means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs.

"Storage" means the containment of hazardous waste in such a manner as not to constitute disposal of such hazardous waste.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(Rule 0400-12-01-.01, continued)

"Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

"Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

"T.C.A." means Tennessee Code Annotated.

"Tennessee Air Quality Act" means the Tennessee Air Quality Act, as amended, T.C.A. §§ 68-201-101 et seq.

"Tennessee Regulatory Commission (TRC)" means the agency now handling pertinent functions formerly handled by the PSC.

"TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin.

"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning".)

"Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

"Transfer facility" means any transportation related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

"Transportation" means the movement of hazardous waste by air, rail, highway, or water.

"Transporter" means any person engaged in the transportation of hazardous waste.

"Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

"Treatability Study" means a study in which a hazardous waste is subjected to a treatment process to determine: (1) Whether the waste is amenable to the treatment process, (2) what pretreatment (if any) is required, (3) the optimal process conditions needed to achieve the desired treatment, (4) the efficiency of a treatment process for a specific waste or wastes, or (5) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of Rule 0400-12-01-.02(1)(d)5 and 6 exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of

(Rule 0400-12-01-.01, continued)

any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous waste constituents are degraded, transformed, or immobilized.

"24-hour, 25-year storm" means a storm of 24-hour duration with a probable recurrence interval of once in 25 years.

"UIC" means the Underground Injection Control Program under Part C of the Safe Drinking Water Act, including an approved program.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

"Underground source of drinking water (USDW)" means an aquifer or its portion:

1. (i) Which supplies any public water system; or
- (ii) Which contains a sufficient quantity of ground water to supply a public water system; and
 - (I) Currently supplies drinking water for human consumption; or
 - (II) Contains fewer than 10,000 mg/l total dissolved solids; and
2. Which is not an exempted aquifer.

"Underground tank" means a device meeting the definition of "tank" in this subparagraph whose entire surface area is totally below the surface of and covered by the ground.

"Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

"United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Universal Waste" means any of the hazardous wastes listed in Rule 0400-12-01-.12(1)(a) that are managed under the universal waste requirements of Rule 0400-12-01-.12.

"Universal Waste Handler":

1. Means:
 - (i) A generator (as defined in this subparagraph) of universal waste; or
 - (ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates

(Rule 0400-12-01-.01, continued)

universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

2. Does not mean:

- (i) A person who treats (except under the provisions of Rule 0400-12-01-.12(2)(d)1 or 3, or Rule 0400-12-01-.12(3)(d)1 or 3), disposes of, or recycles universal waste; or
- (ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal Waste Transfer Facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

"Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

"Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

1. Is required to use a manifest to comply with:

- (i) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or
- (ii) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

2. Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

3. Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with item (5)(b)1(ii)(V) of Rule 0400-12-01-.05 or item (5)(b)1(ii)(V) of Rule 0400-12-01-.06. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(Rule 0400-12-01-.01, continued)

"Verified intermediate facility" means an intermediate facility located in the United States that:

1. If located in the state of Tennessee, has been issued a Certificate to Operate by the Commissioner in accordance with part (4)(b)2 of this rule; and
2. If not located in the state of Tennessee, has been verified by EPA, in accordance with 40 CFR 260.30, 260.31(d) and 260.33, or verified by an EPA authorized state.

"Verified reclamation facility" means a reclamation facility located in the United States that:

1. If located in the state of Tennessee, has been issued a Certificate to Operate by the Commissioner in accordance with part (4)(b)2 of this rule; and
2. If not located in the state of Tennessee, has been verified by EPA, in accordance with 40 CFR 260.30, 260.31(d) and 260.33, or verified by an EPA authorized state.

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Waste" means a solid waste as defined in Rule 0400-12-01-.02(1)(b).

"Wastewater treatment unit" means a device which:

1. Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and
2. Receives and treats or stores an influent wastewater that is a hazardous waste as defined in Rule 0400-12-01-.02(1)(c) or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in Rule 0400-12-01-.02(1)(c), or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Rule 0400-12-01-.02(1)(c); and
3. Meets the definition of tank or tank system in this subparagraph.

"On-site wastewater treatment units" are those which receive solely wastes generated on-site (according to the definition of "on-site" found in this subparagraph). "Off-site wastewater treatment units" are those which receive wastes generated by facilities that are not on-site.

"Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

"Water Quality Control Act" means the Water Quality Control Act of 1977, as amended, T.C.A. §§ 69-3-101 et seq.

"Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

"Well injection": (See "underground injection".)

(Rule 0400-12-01-.01, continued)

"Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

"Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

(b) References [40 CFR 260.11 and 40 CFR 270.6]

1. Here is a list of publications/materials referred to in these rules and where they may be obtained as set forth by EPA in 40 CFR 260.11 and 40 CFR 270.6.
2. These materials are listed as they exist on the effective date of these regulations.

(Note: 40 CFR 260.11 provides that:

- (i) When used in parts 260 through 268 and 278 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

- (ii) The following materials are available for purchase from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959.
 - (I) ASTM D–93–79 or D–93–80, "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester," IBR approved for § 261.21.
 - (II) ASTM D–1946–82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography," IBR approved for §§ 264.1033, 265.1033.
 - (III) ASTM D 2267–88, "Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," IBR approved for § 264.1063.
 - (IV) ASTM D 2382–83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)," IBR approved for §§ 264.1033, 265.1033.
 - (V) ASTM D 2879–92, "Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope," IBR approved for § 265.1084.

(Rule 0400-12-01-.01, continued)

- (VI) ASTM D-3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester," IBR approved for § 261.21(a).
 - (VII) ASTM E 168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis," IBR approved for § 264.1063.
 - (VIII) ASTM E 169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," IBR approved for § 264.1063.
 - (IX) ASTM E 260-85, "Standard Practice for Packed Column Gas Chromatography," IBR approved for § 264.1063.
 - (X) ASTM E 926-88, "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," Test Method C—Bomb, Acid Digestion Method.
- (c) The following materials are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.
- 1. "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§ 264.1035 and 265.1035.'
 - 2. Method 1664, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material SGT-HEM; Non-polar Material) by Extraction and Gravimetry:
 - (i) Revision A, EPA-821-R-98-002, February 1999, IBR approved for Part 261, appendix IX.
 - (ii) Revision B, EPA-821-R-10-001, February 2010, IBR approved for Part 261, appendix IX.
 - 3. The following methods as published in the test methods compendium known as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition. A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times). A suffix of "D" in the method number indicates revision four (the method has been revised four times).
 - (i) Method 0010, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
 - (ii) Method 0020, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
 - (iii) Method 0030, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
 - (iv) Method 1320, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.

(Rule 0400-12-01-.01, continued)

- (v) Method 1311, dated September 1992 and in Update I, IBR approved for part 261, appendix IX, and §§ 261.24, 268.7, 268.40.
- (vi) Method 1330A, dated September 1992 and in Update I, IBR approved for part 261, appendix IX.
- (vii) Method 1312 dated September 1994 and in Update III, IBR approved for part 261, appendix IX and § 278.3(b)(1).
- (viii) Method 0011, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, and part 266, appendix IX.
- (ix) Method 0023A, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and § 266.104.
- (x) Method 0031, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.
- (xi) Method 0040, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.
- (xii) Method 0050, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and § 266.107.
- (xiii) Method 0051, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and § 266.107.
- (xiv) Method 0060, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, § 266.106, and part 266, appendix IX.
- (xv) Method 0061, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, § 266.106, and part 266, appendix IX.
- (xvi) Method 9071B, dated April 1998 and in Update IIIA, IBR approved for part 261, appendix IX.
- (xvii) Method 1010A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xviii) Method 1020B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xix) Method 1110A, dated November 2004 and in Update IIIB, IBR approved for § 261.22 and part 261, appendix IX.
- (xx) Method 1310B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xxi) Method 9010C, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §§ 268.40, 268.44, 268.48.
- (xxii) Method 9012B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §§ 268.40, 268.44, 268.48.
- (xxiii) Method 9040C, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and § 261.22.

(Rule 0400-12-01-.01, continued)

- (xxiv) Method 9045D, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
 - (xxv) Method 9060A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX, and §§ 264.1034, 264.1063, 265.1034, 265.1063.
 - (xxvi) Method 9070A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
 - (xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, part 261, appendix IX, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081, 267.190(a), 268.32.
- (d) The following materials are available for purchase from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.
- 1. "Flammable and Combustible Liquids Code" (1977 or 1981), IBR approved for §§ 264.198, 265.198, 367.202(b).
 - 2. [Reserved]
- (e) The following materials are available for purchase from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.
- 1. API Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," IBR approved for § 265.1084.
 - 2. [Reserved]
- (f) The following materials are available for purchase from the Environmental Protection Agency, Research Triangle Park, NC.
- 1. "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992, EPA Publication No. EPA-450/R-92-019, IBR approved for part 266, appendix IX.
 - 2. [Reserved]
- (g) The following materials are available for purchase from the Organisation for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France.
- 1. OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations), IBR approved for 262.89 of this chapter.
 - 2. [Reserved])

(Note: 40 CFR 270.6 provides that:

- (a) When used in part 270 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the

(Rule 0400-12-01-.01, continued)

Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

- (b) The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800:

1. "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§ 270.24 and 270.25.
2. [Reserved]]

(3) Petitions for Regulatory Exclusions

(a) General [40 CFR 260.20]

1. Any person may petition the Commissioner for a regulatory exclusion from any provision in Rules 0400-12-01-.01 through 0400-12-01-.06, 0400-12-01-.09, 0400-12-01-.10 and 0400-12-01-.12. This subparagraph sets forth general requirements which apply to all such petitions. Subparagraph (b) sets forth additional requirements for petitions to add a testing or analytical method to Rule 0400-12-01-.02, 0400-12-01-.05 or 0400-12-01-.06. Subparagraph (c) sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from subparagraph (1)(c) of Rule 0400-12-01-.02 or the lists of hazardous wastes in paragraph (4) of Rule 0400-12-01-.02. Subparagraph (d) sets forth additional requirements for petitions to amend Rule 0400-12-01-.12 to include additional hazardous wastes or categories of hazardous waste as universal waste.
2. Each petition must be submitted to the Commissioner by certified mail and must include:
 - (i) The petitioner's name and address;
 - (ii) A statement of the petitioner's interest in the proposed action;
 - (iii) A description of the proposed action, including (where appropriate) suggested language; and
 - (iv) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.
3. Except for petitions submitted in accordance with subparagraphs (b) and (c) of this paragraph, the Commissioner will make a tentative decision to grant or deny a petition and shall notify the petitioner of such tentative decision. If the Commissioner's tentative decision is to grant the petition, the Commissioner, with

(Rule 0400-12-01-.01, continued)

the concurrence of the board, shall initiate a rulemaking in accordance with T.C.A. § 4-5-201 et seq.

4. Petitions submitted in accordance with subparagraphs (b) and (c) of this paragraph shall be forwarded to EPA by the Commissioner for a determination.
5. A determination made by EPA pursuant to 40 CFR 260.21 Petitions for Equivalent Testing or Analytical Methods or 40 CFR 260.22 Petitions to Amend Part 261 to Exclude a Waste Produced at a Particular Facility shall be effective in Tennessee on the effective date of the EPA decision.

(b) Petitions for Equivalent Testing or Analytical Methods [40 CFR 260.21]

Petitions received by the Commissioner regarding Equivalent Testing or Analytical Methods shall be forwarded to EPA for a determination.

(Note: The authority for implementing this subparagraph remains with the U.S. Environmental Protection Agency.)

(c) Petitions to Exclude a Waste Produced at a Particular Facility as Nonhazardous [40 CFR 260.22]

Petitions received by the Commissioner regarding Excluding a Waste Produced at a Particular Facility as Nonhazardous shall be forwarded to EPA for a determination.

(Note: The authority for implementing this subparagraph remains with the U.S. Environmental Protection Agency.)

(d) Petitions to Amend Rule 0400-12-01-.12 to Include Additional Hazardous Wastes as Universal Wastes [40 CFR 260.23]

1. Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of Rule 0400-12-01-.12 may petition for a regulatory amendment under this subparagraph, subparagraph (a) of this paragraph and Rule 0400-12-01-.12(7).
2. To be successful, the petitioner must demonstrate to the satisfaction of the Commissioner that regulation under the universal waste regulations of Rule 0400-12-01-.12 is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by part (a)2 of this paragraph. The petition should also address as many of the factors listed in Rule 0400-12-01-.12(7)(b) as are appropriate for the waste or category of waste addressed in the petition.
3. The Commissioner shall consider the factors listed in Rule 0400-12-01-.12(7)(b).
4. The Commissioner may request additional information needed to evaluate the merits of the petition.
5. The Commissioner shall make a tentative decision. The tentative decision will be based on the weight of evidence showing that regulation under Rule 0400-12-01-.12 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(Rule 0400-12-01-.01, continued)

6. The Commissioner shall comply with the requirements of part (a)3 of this paragraph regarding the tentative decision.

(4) Variances, Certificates to Operate, and Procedures

(a) Requirements for General Variances

1. Any person may petition the Commissioner for a variance from any provision in these rules. This subparagraph sets forth general requirements which apply to all such petitions.
2. Each petition must be submitted to the Commissioner by certified mail and must include:
 - (i) The petitioner's name and address;
 - (ii) A statement of the petitioner's interest in the proposed action;
 - (iii) A description of the proposed action, including (where appropriate) suggested language; and
 - (iv) A written description of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(Note: See paragraph (9) of Rule 0400-12-01-.08 for the appropriate fee to be submitted along with the petition for a general variance.)

3. The Commissioner will make a tentative decision to grant or deny a petition and will notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision to grant the petition, the Commissioner will give public notice of such tentative decision for written public comment. The public notice shall be published by the petitioner as required by the Commissioner.
4. Upon the written request of any interested person, the Commissioner may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Commissioner may in any case decide on his own motion to hold an informal public hearing. Notice of the public hearing shall be published by the petitioner as required by the Commissioner.
5. After evaluating all public comments the Commissioner will make a final decision to either grant or deny the petition, and will give a public notice of such decision. The petitioner shall publish this public notice as required by the Commissioner.
6. Any variance granted pursuant to this subparagraph may be rescinded if it is discovered and determined by the Commissioner that:
 - (i) The variance has resulted or may result in a significant hazard to public health or the environment;
 - (ii) The factual basis for which the variance was granted has significantly changed;
 - (iii) The regulations, as amended, no longer support the variance;

(Rule 0400-12-01-.01, continued)

- (iv) The conditions issued by the Commissioner for the variance's approval have been violated; or
 - (v) The variance threatens program authorization with EPA.
- 7. Any variance granted pursuant to this subparagraph shall remain valid as specified by the Commissioner, not to exceed five (5) years, or until rescinded in accordance with part 6 of this subparagraph.
- 8. Any person with a valid variance granted in accordance with this subparagraph shall submit to the Commissioner:
 - (i) No later than March 1 of each year, a certification that the factual basis for which the variance was granted remains unchanged, the regulations, as amended, continue to support it and the conditions for its approval have not been violated; or
 - (ii) Within thirty (30) days of its discovery, a detailed description of any change in the factual basis for which the variance was granted, the impact any amended regulation has on the variance, or any noncompliance with a condition for its approval.
- (b) Non-waste determinations, variances from classification as a solid waste and Certificates to Operate for a hazardous secondary material reclamation facility or intermediate facility [40 CFR 260.30]
 - 1. In accordance with the standards and criteria in subparagraphs (c) and (e) of this paragraph and the procedures in subparagraph (g) of this paragraph, the Commissioner may determine on a case-by-case basis that the following recycled materials are not solid wastes:
 - (i) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Rule 0400-12-01-.02(1)(a)3(viii));
 - (ii) Materials that are reclaimed and then reused within the original production process in which they were generated;
 - (iii) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;
 - (iv) Hazardous secondary materials that are reclaimed in a continuous industrial process; and
 - (v) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.
 - 2. This part shall not be effective until July 2, 2018. In accordance with the standards and criteria in subparagraph (f) of this paragraph and the procedures in subparagraph (g) of this paragraph, the Commissioner may, on a case-by-case basis, issue a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or the interim status standards of Rule 0400-12-01-.05.

(Rule 0400-12-01-.01, continued)

(c) Standards and Criteria for Variances from Classification as a Solid Waste [40 CFR 260.31]

1. The Commissioner may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Commissioner's decision will be based on the following criteria:
 - (i) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);
 - (ii) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;
 - (iii) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;
 - (iv) The extent to which the material is handled to minimize loss; and
 - (v) Other relevant factors.
2. The Commissioner may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on a description of the reclamation operation and the following criteria:
 - (i) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;
 - (ii) The extent to which the material is handled before reclamation to minimize loss;
 - (iii) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;
 - (iv) The location of the reclamation operation in relation to the production process;
 - (v) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;
 - (vi) Whether the person who generates the material also reclaims it; and
 - (vii) Other relevant factors.
3. The Commissioner may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed,

(Rule 0400-12-01-.01, continued)

but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in subparagraph (5)(d) of this rule and on whether all of the following decision criteria are satisfied:

- (i) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;
- (ii) Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;
- (iii) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;
- (iv) Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading); and
- (v) Whether the partially-reclaimed material is handled to minimize loss.

(d) Variance to be classified as a boiler [40 CFR 260.32]

In accordance with the standards and criteria in subparagraph (2)(a) of this rule (definition of "boiler") and the procedures in subparagraph (g) of this paragraph, the Commissioner may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in subparagraph (2)(a) of this rule, after considering the following criteria:

- 1. The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and
- 2. The extent to which the combustion chamber and energy recovery equipment are of integral design; and
- 3. The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and
- 4. The extent to which exported energy is utilized; and
- 5. The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and
- 6. Other factors, as appropriate.

(e) Standards and criteria for non-waste determinations [40 CFR 260.34]

- 1. An applicant may apply to the Commissioner for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in parts 2 and 3 of this subparagraph, as applicable. If an application is denied, the hazardous

(Rule 0400-12-01-.01, continued)

- secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under subparagraph (c) of this paragraph).
2. The Commissioner may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in subparagraph (5)(d) of this rule and on the following criteria:
 - (i) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;
 - (ii) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);
 - (iii) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and
 - (iv) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under subparagraph (1)(b) or (d) of Rule 0400-12-01-.02.
 3. The Commissioner may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in subparagraph (5)(d) of this rule and on the following criteria:
 - (i) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);
 - (ii) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;
 - (iii) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);
 - (iv) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly

(Rule 0400-12-01-.01, continued)

higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

- (v) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under subparagraph (1)(b) or (d) of Rule 0400-12-01-.02.
- (f) This subparagraph shall not be effective until July 2, 2018. The Commissioner may issue a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or the interim status standards of Rule 0400-12-01-.05.

1. The Commissioner's decision will be based on the following criteria:

- (i) The reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to subparagraph (5)(d) of this rule and its hazardous secondary material acceptance plan;
- (ii) The reclamation facility or intermediate facility must satisfy the financial assurance condition in subitem (1)(d)1(xxiv)(VI)VI of Rule 0400-12-01-.02;
- (iii) The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under Rule Chapter 0400-12-01 or RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;
- (iv) The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under paragraph (13) of Rule 0400-12-01-.02;
- (v) If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment; and
- (vi) The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures, and must include consideration of potential cumulative risks from other nearby potential stressors.

(Rule 0400-12-01-.01, continued)

2. To evaluate the criteria of subpart 1(vi) of this subparagraph, the Commissioner will require the petitioner to comply with subparts (i) and (ii) of this part.
 - (i) Prior to applying for a Certificate to Operate, the petitioner must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous secondary material management activities.
 - (I) At the meeting, the petitioner must:
 - I. Post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses; and
 - II. Provide a community impact statement that includes the following:
 - A. A description of the hazardous secondary materials to be received at the facility, including quantities and methods of management;
 - B. A description of security procedures proposed for the facility;
 - C. Information on hazard prevention and preparedness, including a summary of the arrangements with local emergency authorities;
 - D. A description of procedures, structures or equipment used to prevent employee exposure, hazards during unloading, runoff from handling areas, and contamination of water supplies;
 - E. A description of traffic patterns, traffic volume and control, condition of access roads, and the adequacy of traffic control signals; and
 - F. A description of the facility location information relative to flood plain and seismic activity.
 - (II) The petitioner must submit documentation to the Commissioner of the public notices, the community impact statement, a summary of the meeting, along with the list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting.
 - (III) The owner or operator must provide public notice of the community meeting at least thirty (30) days prior to the meeting.
 - (IV) The public notice required by item (III) of this subpart must contain language approved by the Commissioner and published in a manner specified by the Commissioner.

(Rule 0400-12-01-.01, continued)

(ii) The petitioner must describe how the facility is designed, constructed, operated and maintained to ensure protection of human health and the environment. Protection of human health and the environment includes, but is not limited to:

(I) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in the ground water or subsurface environment, considering:

- I. The volume and physical and chemical characteristics of the hazardous secondary material to be managed at the facility, including its potential for migration through soil, liners, or other containing structures;
- II. The hydrologic and geologic characteristics of the management units at the facility and the surrounding area;
- III. The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water;
- IV. The quantity and direction of ground-water flow;
- V. The proximity to and withdrawal rates of current and potential ground-water users;
- VI. The patterns of land use in the region;
- VII. The potential for deposition or migration of hazardous constituents into subsurface physical structures, and into the root zone of food-chain crops and other vegetation;
- VIII. The potential for health risks caused by human exposure to hazardous constituents; and
- IX. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.

(II) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in surface water, or wetlands, or on the soil surface considering:

- I. The volume and physical and chemical characteristics of the hazardous secondary material to be managed at the facility;
- II. The effectiveness and reliability of containing, confining, and collecting systems and structures in preventing migration;
- III. The hydrologic characteristics of the facility and the surrounding area, including the topography of the land around the facility;
- IV. The patterns of precipitation in the region;
- V. The quantity, quality, and direction of ground-water flow;

(Rule 0400-12-01-.01, continued)

- VI. The proximity of the unit to surface waters;
 - VII. The current and potential uses of nearby surface waters and any water quality standards established for those surface waters;
 - VIII. The existing quality of surface waters and surface soils, including other sources of contamination and their cumulative impact on surface waters and surface soils;
 - IX. The patterns of land use in the region;
 - X. The potential for health risks caused by human exposure to hazardous constituents; and
 - XI. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.
- (III) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in the air, considering:
- I. The volume and physical and chemical characteristics of the hazardous secondary materials to be managed at the facility, including its potential for the emission and dispersal of gases, aerosols and particulates;
 - II. The effectiveness and reliability of systems and structures to reduce or prevent emissions of hazardous constituents to the air;
 - III. The operating characteristics of the units managing hazardous secondary materials;
 - IV. The atmospheric, meteorologic, and topographic characteristics of the units to be managing hazardous secondary materials at the facility and the surrounding area;
 - V. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;
 - VI. The potential for health risks caused by human exposure to hazardous constituents; and
 - VII. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.
- (g) This subparagraph shall not be effective until July 2, 2018, in so far as it relates to the issuance of Certificates to Operate. Procedures for variances from classification as a solid waste, for issuing a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility, for variances to be classified as a boiler, and for non-waste determinations [40 CFR 260.33]

(Rule 0400-12-01-.01, continued)

The Commissioner will use the following procedures in evaluating applications for variances from classification as a waste, applications for obtaining a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility, applications to classify particular enclosed controlled flame combustion devices as boilers, and applications for non-waste determinations.

1. The applicant must apply to the Commissioner for the variance, the Certificate to Operate or non-waste determination. The application must address the relevant criteria contained in subparagraph (c), (d), (e) or (f) of this paragraph, as applicable.
2. The Commissioner will evaluate the application and make a tentative decision to grant or deny the application and shall notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision to grant the petition, the Commissioner shall give public notice of such tentative decision for written public comment. The public notice shall be provided by the applicant as prepared and required by the Commissioner in a newspaper advertisement or radio broadcast in the locality where the recycler is located. The applicant shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will accept comment on the tentative decision for thirty (30) days, and may also hold a public hearing upon request or at his discretion. Notice of the public hearing shall be given by the applicant and prepared as required by the Commissioner. The Commissioner will issue a final decision after receipt of comments and after the hearing (if any).
3.
 - (i) Except for the change described in subpart (ii) of this part. in the event of a change in circumstances that affects how a hazardous secondary material meets the relevant criteria contained in subparagraph (c), (d), (e) or (f) of this paragraph upon which a variance, Certificate to Operate or non-waste determination has been based, the applicant must send a description of the change in circumstances to the Commissioner. The Commissioner may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance, Certificate to Operate, or non-waste determination or may require the facility to re-apply for the variance, Certificate to Operate or non-waste determination.
 - (ii) Any change made to the hazardous secondary material acceptance plan required under item (4)(d)1(xxiv)(VI)VIII of Rule 0400-12-01-.02 must be approved and the Certificate to Operate modified by the Commissioner after considering the applicable criteria of subparagraph (f) of this paragraph and following the procedures of this subparagraph prior to the change being implemented.
4. Variances, Certificates to Operate and non-waste determinations shall be effective for a fixed term not to exceed ten (10) years. No later than six (6) months prior to the end of this term, facilities must re-apply for a variance, Certificate to Operate, or non-waste determination. If a facility re-applies for a variance, Certificate to Operate, or non-waste determination within six (6) months, the facility may continue to operate under an expired variance, Certificate to Operate or non-waste determination until receiving a decision on the facility's re-application from the Commissioner.
5. Facilities receiving a variance, Certificate to Operate or non-waste determination must provide notification as required by subparagraph (5)(c) of this rule.

(Rule 0400-12-01-.01, continued)

- (h) Causes for Termination of the Certificate to Operate. This subparagraph shall not be effective until July 2, 2018.
 - 1. Failure of the owner or operator to comply with any condition of the Certificate to Operate;
 - 2. The owner or operator's failure in the application or during the issuance process to disclose fully all relevant facts, or the owner or operator's misrepresentation of any relevant facts at any time;
 - 3. A determination by the Commissioner that continuing the authorized activity endangers human health or the environment;
 - 4. Failure of the owner or operator to timely pay the annual maintenance fees in accordance with Rule 0400-12-01-.08; or
 - 5. At the request of the owner or operator, provided all hazardous secondary materials and residues have been removed to the satisfaction of the Commissioner.
 - (i) Duty to Comply with the Certificate to Operate. This subparagraph shall not be effective until July 2, 2018.
 - 1. The owner or operator of the hazardous secondary material reclamation or intermediate facility shall comply with the conditions of the Certificate to Operate as determined necessary by the Commissioner.
 - 2. Failure to comply with the conditions of the Certificate to Operate issued by the Commissioner shall subject the owner or operator of the hazardous secondary material reclamation or intermediate facility to an enforcement action, including, if applicable, operating a hazardous waste treatment, storage or disposal facility without a permit.
- (5) Additional Requirements
- (a) Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis [40 CFR 260.40]

The Commissioner may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in Rule 0400-12-01-.02(1)(f)1(ii)(III) should be regulated under Rule 0400-12-01-.02(1)(f)2 and 3. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Commissioner will consider the following factors:

 - 1. The types of materials accumulated or stored and the amounts accumulated or stored;
 - 2. The method of accumulation or storage;
 - 3. The length of time the materials have been accumulated or stored before being reclaimed;

(Rule 0400-12-01-.01, continued)

4. Whether any contaminants are being released into the environment, or are likely to be so released; and
5. Other relevant factors.

The procedures for this decision are set forth in subparagraph (b) of this paragraph.

- (b) Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities [40 CFR 260.41]

The Commissioner will use the following procedures when determining whether to regulate hazardous waste recycling activities described in Rule 0400-12-01-.02(1)(f)1(ii)(III) under the provisions of Rule 0400-12-01-.02(1)(f)2 and 3, rather than under the provisions of Rule 0400-12-01-.09(6).

1. If a generator is accumulating the waste, the Commissioner will issue a notice, published by the owner or operator, as prepared and required by the Commissioner, setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of paragraphs (1), (4), (5), and (6) of Rule 0400-12-01-.03. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Commissioner will hold a public hearing. The Commissioner will provide notice, published by the owner or operator as prepared and required by the Commissioner, of the hearing to the public and allow public participation at the hearing. The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will issue a final order after the hearing stating whether or not compliance with Rule 0400-12-01-.03 is required. The order becomes effective 30 days after service of the decision unless the Commissioner specifies a later date or unless review by the Board is requested. The order may be appealed to the Board by any person who participated in the public hearing. The Board may choose to grant or to deny the appeal. Final Department action occurs when a final order is issued and Department review procedures are exhausted.
2. If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Rule 0400-12-01-.07. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Commissioner's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the determination. The question of whether the Commissioner's decision was proper will remain open for consideration during the public comment period discussed under Rule 0400-12-01-.07(7)(e) and in any subsequent hearing.

- (c) Notification requirement for hazardous secondary materials. [40 CFR 260.42]

1. Facilities managing hazardous secondary materials under subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Commissioner using forms provided by the department that include the following information:

(Rule 0400-12-01-.01, continued)

- (i) The name, address, and EPA ID number (if applicable) of the facility;
 - (ii) The name and telephone number of a contact person;
 - (iii) The NAICS code of the facility;
 - (iv) The regulation under which the hazardous secondary materials will be managed;
 - (v) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
 - (vi) A list of hazardous secondary materials that will be managed according to the regulation (reported as hazardous waste codes that would apply if the hazardous secondary materials were managed as hazardous wastes);
 - (vii) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;
 - (viii) The quantity of each hazardous secondary material to be managed annually; and
 - (ix) The certification (included in the forms provided by the department) signed and dated by an authorized representative of the facility.
2. If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 the facility must notify the Commissioner within thirty (30) days using forms provided by the department. For purposes of this part, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 and does not expect to manage any amount of hazardous secondary materials for at least one (1) year.
- (d) Legitimate recycling of hazardous secondary materials [40 CFR 260.43]
1. Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this part.
- (i) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:
 - (I) Contributes valuable ingredients to a product or intermediate; or
 - (II) Replaces a catalyst or carrier in the recycling process; or
 - (III) Is the source of a valuable constituent recovered in the recycling process; or

(Rule 0400-12-01-.01, continued)

- (IV) Is recovered or regenerated by the recycling process; or
 - (V) Is used as an effective substitute for a commercial product.
 - (ii) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:
 - (I) Sold to a third party; or
 - (II) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.
 - (iii) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.
 - (iv) This subpart shall not be effective until July 2, 2018, in so far as it is applied through part (1)(b)7 of Rule 0400-12-01-.02. The product of the recycling process must be comparable to a legitimate product or intermediate:
 - (I) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:
 - I. The product of the recycling process does not exhibit a hazardous characteristic (as defined in paragraph (3) of Rule 0400-12-01-.02) that analogous products do not exhibit, and
 - II. The concentrations of any hazardous constituents found in appendix VIII of paragraph (30) of Rule 0400-12-01-.02 that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.
 - (II) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:
 - I. The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals), or
- (Note: For specialty products such as specialty batch chemicals or specialty metal alloys, customer specifications would be sufficient.)

(Rule 0400-12-01-.01, continued)

- II. The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).

(Note: There is no analogous product when the hazardous secondary material is recycled by being returned to the original production process or processes. Production process or processes includes those activities that tie directly into the manufacturing operation or those activities that are the primary operation at an establishment.)

- (III) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per item (I) or (II) of this subpart, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the product made using recycled material does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Commissioner of this activity using forms provided by the department.

(Note: To comply with the requirements of this subpart, a generator of the hazardous secondary material, product or intermediate may use its knowledge of the materials it recycles and of the recycling process to make legitimacy determinations.)

(Note: A person who meets the specific provisions included in 0400-12-01-.02(1)(b)3 Table 1, 0400-12-01-.02(1)(b)5, 0400-12-01-.02(1)(d)1(vi) through (xxii), 0400-12-01-.02(1)(f)1(ii)(III) and (IV), and 0400-12-01-.02(1)(f)1(iii)(I), are presumed to conduct legitimate recycling, except in those rare cases when it is necessary to document legitimacy in accordance with item 1(iv)(III) of this subparagraph. If, at any time, the Commissioner suspects that sham recycling may be occurring, in accordance with part (1)(b)6 of Rule 0400-12-01-.02, the Commissioner may require a person to demonstrate that the recycling in question is legitimate in accordance with this subparagraph.)

2. Reserved

3. Reserved

(6) Reserved

(7) Proprietary Information

(a) General

1. Purpose, Scope, and Applicability

(Rule 0400-12-01-.01, continued)

Except as provided under subparts (i) and (ii) of this part, any information which is supplied to the Department by persons who are subject to these rules and which is designated as proprietary information (as defined in subpart 2(viii) of this subparagraph) shall be handled by the Department as specified in this paragraph to assure that its confidentiality is maintained. Unless it is claimed or designated as proprietary, any information supplied to the Department under or relating to these rules shall be available for public review at any time during the State's normal business hours.

- (i) After the effective date of these rules, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be prepared and used in accordance with subpart (3)(a)1(iii) of Rule 0400-12-01-.03.
- (ii) The Department will make any electronic manifest that is prepared and used in accordance with subpart (3)(a)1(iii) of Rule 0400-12-01-.03, or any paper manifest that is submitted to the system under item (5)(b)1(ii)(V) of Rule 0400-12-01-.05 or item (5)(b)1(ii)(V) of Rule 0400-12-01-.06 available to the public under this paragraph when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by the Department to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

(Note: See 40 CFR 260.2(b) for additional requirements.)

2. Definitions

The following terms shall be defined as indicated for the purposes of this paragraph and this paragraph only:

- (i) "Access" is the ability and opportunity to gain knowledge of Proprietary Information in any manner whatsoever.
- (ii) "Authorized person" is any person, including members of the Board, authorized to receive Proprietary Information. Except for members of the Board, such authorization shall be granted in writing by the Commissioner.
- (iii) "Document" is any recorded information regardless of its physical form or characteristics, including, but not limited to, written or printed material; processing cards and tapes; maps; charts; paintings; drawings; engravings; sketches; working papers and notes; reproduction of such things by any means or process; and sound, voice, or electronic recordings in any form.
- (iv) "Document Control Number" is the unique number assigned by the document control officer to any document containing Proprietary Information.
- (v) "Document Control Officer" is the individual authorized by the Commissioner in writing to be responsible for all incoming and outgoing documents identified as containing Proprietary Information.

(Rule 0400-12-01-.01, continued)

- (vi) "Information" is knowledge which can be communicated by any means.
- (vii) "Instruction" is fully informing individuals in writing of their responsibilities for safeguarding Proprietary Information and the security procedures they shall follow.
- (viii) "Proprietary Information" means any confidential information that relates to a trade secret, product, apparatus, process, operation, style of work, or financial information which is owned (not necessarily exclusively) by or licensed to a person and claimed by that person to be proprietary and confidential; provided that the claim is accompanied by a written statement from such person relating the reasons why such information should be held confidential. Such information may be submitted to the Department by the owner/licensee of the trade secret, product, etc.; or by another governmental agency which has obtained the information. If submitted by the owner/licensee, the written statement accompanying the information claimed proprietary must, at a minimum, answer the questions in items (I) through (IV) of this subpart. If submitted by another governmental agency, the written statement need include only the accompanying statements/reasons obtained by that agency.
 - (I) Will disclosure of the information be likely to substantially harm your competitive position? If so, what would the harm be, and why should it be viewed as substantial? What is the relationship between disclosure and the harm?
 - (II) What measures have you taken to guard against undesired disclosure of the information to others?
 - (III) To what extent has the information been disclosed to others, and what precautions have you taken in connection with that disclosure?
 - (IV) Has the U.S. Environmental Protection Agency or any other Federal or State of Tennessee agency made a pertinent confidentiality determination? (If so, please include a copy of this determination, if available.)

3. Policy

Department employees are prohibited from disclosing, in any manner and to any extent not authorized by law or regulations, any Proprietary Information coming to them in the course of their employment or official duties. Proprietary Information is to be held in confidence, protected in accordance with the procedures described in this paragraph, and released only to authorized persons.

(b) Responsibilities

1. Commissioner

The Commissioner is responsible for:

- (i) Designating a document control officer;

(Rule 0400-12-01-.01, continued)

- (ii) Assuring that all Department employees receiving and handling Proprietary Information receive instruction as to their responsibilities for controlling Proprietary Information;
- (iii) Maintaining a record which lists all employees who have authorized access to Proprietary Information;
- (iv) Obtaining a "Confidentiality Agreement" from all employees having access to Proprietary Information;
- (v) Obtaining a "Confidentiality Agreement upon Transfer or Termination" from all employees having access to Proprietary Information in the event such employees decide to terminate employment or are transferred to a position not requiring such access;
- (vi) Assuring that the appropriate requirements for storage and use are met, including control of access to keys and combinations;
- (vii) Taking appropriate disciplinary action concerning any Department employees who fail to comply with the requirements of this paragraph; and
- (viii) Notifying the person submitting Proprietary Information which has been disclosed in violation of the requirements of this paragraph of such occurrence.

2. Document Control Officer

The Document Control Officer is responsible for the maintenance, control and distribution of all Proprietary Information received by the Department as follows:

- (i) Logging of all Proprietary Information as received by the Department, both incoming and outgoing;
- (ii) Assigning a document control number to each document received containing Proprietary Information;
- (iii) Maintaining a system which identifies employees authorized to receive Proprietary Information;
- (iv) Releasing Proprietary Information only to persons from whom the confidentiality agreements of subparts 1(iv) and (v) of this subparagraph have been obtained;
- (v) Maintaining a system to insure that any Proprietary Information transmitted to field locations is received;
- (vi) Maintaining at Department offices a system for retrieval of documents that are furnished to other program offices;
- (vii) Authorizing and supervising the reproduction and destruction of Proprietary Information; and
- (viii) Assuring that recipients of Proprietary Information have proper storage capability prior to release of such documents, or, if they do not, requiring return of the released Proprietary Information the same day.

(Rule 0400-12-01-.01, continued)

3. Employees

Employees are responsible for:

- (i) Controlling all Proprietary Information entrusted to them;
- (ii) Only discussing Proprietary Information with authorized persons;
- (iii) Never leaving the Proprietary Information unattended when not properly stored;
- (iv) Never discussing Proprietary Information over the telephone except upon approval of the document control officer should the Proprietary Information be needed in an emergency situation;
- (v) Storing the Proprietary Information as specified in part (c)5 of this paragraph when not in use and at the close of business;
- (vi) Not reproducing Proprietary Information documents. Additional copies must be obtained through the document control officer; and
- (vii) Reporting immediately possible violations of these regulations to the Commissioner.

(c) Procedures

1. Receipt and Handling

The document control officer shall:

- (i) Receive all information claimed as proprietary and confidential which is submitted to the Department;
- (ii) Log in all Proprietary Information received by the Department;
- (iii) Assign a document control number to all Proprietary Information;
- (iv) Attach a Proprietary Information cover sheet to the document;
- (v) Release Proprietary Information only to authorized persons; and
- (vi) Review the claim and, using the written statement accompanying the information claimed proprietary, the answers to the questions at items (a)2(viii)(I) through (IV) of this paragraph and other information as may be required, determine whether to approve or deny it, in part or in whole.

2. Transmission

- (i) Proprietary Information must be transmitted in a double envelope by Registered Mail, Return Receipt Requested. The inner envelope must reflect the address of the recipient with the following additional wording on the front side of the inner envelope:

"Confidential Business - To Be Opened By Document Control Officer Only."

(Rule 0400-12-01-.01, continued)

The outer envelope must reflect the normal address without the additional wording.

- (ii) All requests to the document control officer for Proprietary Information must be in writing and signed by the requesting employee.
- (iii) Proprietary Information may be hand carried to other Department facilities by authorized persons providing the dispatching document control officer maintains a record and obtains a receipt from the receiving document control officer. Information being hand carried should be packaged as described in subpart (i) of this part.
- (iv) Proprietary Information within a Department office shall be hand delivered only by an authorized person. At no time shall Proprietary Information be transmitted through inner office mailing channels.

3. Reproduction

Proprietary Information shall not be reproduced except upon approval by and under the supervision of the document control officer. Any reproduction shall be limited by a document control system and be subject to the same control requirements as for the original.

4. Destruction

Proprietary Information shall not be destroyed except upon approval by and under the supervision of the document control officer. The document control officer shall keep a record of destruction in the appropriate log and notify the person submitting the Proprietary Information.

5. Storage

- (i) Documents containing Proprietary Information must be stored within a locked cabinet so as to limit access to authorized persons.
- (ii) Keys and/or combinations to cabinets and/or rooms where the data is stored must be issued only to an authorized person.

(d) Transmittal Outside Department Offices

Proprietary Information shall not be transmitted outside Department offices without the approval of the Commissioner and such information must be transmitted by the document control officer in accordance with part (c)2 of this paragraph. The person submitting the Proprietary Information shall be notified when such occurs.

(e) Release to EPA

Notwithstanding any requirement of this paragraph seemingly to the contrary, Proprietary Information may be released to the U.S. Environmental Protection Agency in connection with the Commissioner's or Board's implementation or his or its responsibilities pursuant to the Act or as necessary to comply with federal law. Any such release of Proprietary Information to EPA, however, will be made with a confidentiality claim and shall be accompanied by the written statement received by the Department pursuant to subpart (a)2(viii) of this paragraph. Any transmittal of Proprietary Information to EPA shall be subject to the requirements of subparagraph (d) of this paragraph. The Commissioner shall notify the submitter of Proprietary

(Rule 0400-12-01-.01, continued)

Information of the release of such information to EPA as soon as practicable - to be no later than 5 days after such release - following receipt of EPA's request for the information.

(8) Availability of Information

- (a) The Division will respond to all requests for records within 20 days after the date of receipt of such requests.
- (b) If a facility does not assert a claim of proprietary information at the first opportunity provided by the Division, the Division may release the information without further notice to the facility. In addition, in the case of any information submitted in connection with a permit, permit application or interim status under Rules 0400-12-01-.05, .06, and .07, any facility proprietary information claim must be asserted at the time of submission of the information to the Division.
- (c) If a proprietary information claim is asserted and cannot be resolved in the time period provided for the Division's response to a request, the requestor will be notified of the proprietary information claim within the maximum 20-day time limit provided for the Division's response. In addition, the requestor must be told that the Division has denied the request in order to resolve the proprietary information claim.

(9) Retention of Records

- (a) In order to protect public health, safety and welfare, to prevent degradation of the environment, conserve natural resources and provide a coordinated statewide hazardous waste management program it is necessary to manage and retain records. These records shall be managed in accordance with Chapter 1210-01 Rules of Public Records Commission.
- (b) As defined by paragraph (2) of Rule 1210-01-.02, permanent records have permanent administrative, fiscal, historical or legal value. The following types of records generated by or received by the Department while fulfilling its duties under T.C.A. §§ 68-212-101 et seq., and Chapter 0400-12-01 Hazardous Waste Management shall be managed as permanent records:
 - 1. All records containing information, by site, of hazardous wastes or hazardous secondary materials that have been generated, treated, stored, disposed of and/or recycled, or hazardous waste or hazardous secondary material activities that have been conducted at the site, shall be managed as a permanent record. These records have historic value since there is a risk that these hazardous waste activities may have caused contamination that remains undetected for many years. When an exposure occurs these records would be required in order to facilitate an effective response. These records include, but are not limited to:
 - (i) Generator notifications, waste stream pages and annual reports;
 - (ii) Hazardous waste permits and permit applications;
 - (iii) Hazardous Waste Inspection reports and enforcement actions; and
 - (iv) Recycling determinations and investigations.
 - 2. All records regarding hazardous waste or hazardous substance remedial action sites managed by the Division shall be managed as permanent records. Records regarding site characterization, monitoring, remedial actions, risk determination

(Rule 0400-12-01-.01, continued)

and enforcement actions have historic value since the long term effects of hazardous waste, hazardous waste constituents or hazardous substances are uncertain and could lead to future exposures. When an exposure occurs, these records would be required in order to facilitate an effective response.

3. All records regarding unregulated hazardous waste sites where unlawful hazardous waste treatment, storage, disposal or recycling was documented shall be managed as permanent records. These records have historic value since the long term effects of hazardous waste, hazardous waste constituents or hazardous substances are uncertain and could lead to future exposures. When an exposure occurs, these records would be required in order to facilitate an effective response.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-212-101 et seq. **Administrative History:** Original rule filed June 19, 2012; effective September 17, 2012. Rule was renumbered from 1200-01-11-.01 which was repealed. Amendments filed November 12, 2014; effective February 10, 2015. Amendments filed July 10, 2015; effective October 8, 2015. Amendments filed May 9, 2017; to have become effective August 7, 2017. 75-day stay of effective date of rules filed July 20, 2017; new effective date to have been October 21, 2017. 75-day stay of effective date of rules filed September 7, 2017; new effective date January 4, 2018. Emergency rule filed December 14, 2017 to become effective January 4, 2018; effective through July 3, 2018.