**Section 721.102 Definition of Solid Waste**

a) Solid Waste

1) A solid waste is any discarded material that is not excluded pursuant to Section 721.104(a) or that is not excluded pursuant to 35 Ill. Adm. Code 720.130 and 720.131 or 35 Ill. Adm. Code 720.130 and 720.134.

2) Discarded Material

A) A discarded material is any material that is described as follows:

i) It is abandoned, as described in subsection (b);

ii) It is recycled, as described in subsection (c);

iii) It is considered inherently waste-like, as described in subsection (d); or

iv) It is a military munition identified as a solid waste in 35 Ill. Adm. Code 726.302.

B) This subsection (a)(2)(B) corresponds with 40 CFR 261.2(a)(2)(ii), which USEPA has removed and marked "reserved". This statement maintains structural consistency with the corresponding federal regulations.

b) A material is a solid waste if it is abandoned in one of the following ways:

1) It is disposed of;

2) It is burned or incinerated;

3) It is accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

4) Sham recycled, as explained in subsection (g).

c) A material is a solid waste if it is recycled − or accumulated, stored, or treated before recycling − as specified in subsections (c)(1) through (c)(4), if one of the following occurs with regard to the material:

1) The material is used in a manner constituting disposal.

A) A material that is noted with a "yes" in column 1 of the table in Appendix Z is a solid waste when one of the following occurs :

i) The material is applied to or placed on the land in a manner that constitutes disposal; or

ii) The material is used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

B) However, a commercial chemical product that is listed in Section 721.133 is not a solid waste if it is applied to the land and that is its ordinary manner of use.

2) The material is burned for energy recovery.

A) A material that is noted with a "yes" in column 2 of the table in Appendix Z is a solid waste when one of the following occurs:

i) It is burned to recover energy;

ii) It is used to produce a fuel or is otherwise contained in fuels (in which case the fuel itself remains a solid waste);

iii) It is contained in fuels (in which case the fuel itself remains a solid waste).

B) However, a commercial chemical product that is listed in Section 721.133 is not a solid waste if it is itself a fuel.

3) Reclaimed. A material noted with a "No" in column 3 of the table in Appendix Z is not a solid waste when reclaimed (except as provided under Section 721.104(a)(17)). A material noted with a "Yes" in column 3 of Appendix Z is a solid waste when reclaimed, unless it meets the requirements of Section 721.104(a)(17), (a)(23), (a)(24), or (a)(27).

4) Accumulated Speculatively. A material noted with "yes" in column 4 of the table in Appendix Z is a solid waste when accumulated speculatively.

d) Inherently Waste-Like Materials. The following materials are solid wastes when they are recycled in any manner:

1) USEPA hazardous waste numbers F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

2) A secondary material fed to a halogen acid furnace that exhibits a characteristic of a hazardous waste or which is listed as a hazardous waste, as defined in Subpart C or D, except for brominated material that meets the following criteria:

A) The material must contain a bromine concentration of at least 45 percent;

B) The material must contain less than a total of one percent of toxic organic compounds listed in Appendix H; and

C) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

3) The following criteria are used to add wastes to the list:

A) Disposal Method or Toxicity

i) The material is ordinarily disposed of, burned, or incinerated; or

ii) The material contains toxic constituents listed in Appendix H and these constituents are not ordinarily found in raw materials or products for which the material substitutes (or are found in raw materials or products in smaller concentrations) and is not used or reused during the recycling process; and

B) The material may pose a substantial hazard to human health and the environment when recycled.

e) Materials That Are Not Solid Waste When Recycled

1) A material is not a solid waste when it can be shown to be recycled by fulfilling one of the following conditions:

A) It is used or reused as an ingredient in an industrial process to make a product, provided the material is not being reclaimed; or

B) It is used or reused as effective substitutes for commercial products; or

C) It is returned to the original process from which it is generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the material must be managed in such a manner that there is no placement on the land. In cases where the material is generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at Section 721.104(a)(17) apply rather than this provision.

2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in subsections (e)(1)(A) through (e)(1)(C)):

A) A material used in a manner constituting disposal or used to produce a product that is applied to the land; or

B) A material burned for energy recovery, used to produce a fuel, or contained in fuels; or

C) A material accumulated speculatively; or

D) A material listed in subsections (d)(1) and (d)(2).

f) Documentation of Claims That a material is Not a Solid Waste or is Conditionally Exempt from Regulation. A respondent in an action to enforce regulations implementing Subtitle C of RCRA or Section 21 of the Environmental Protection Act that raises a claim that a certain material is not a solid waste or that the material is conditionally exempt from regulation must demonstrate that there is a known market or disposition for the material and that the material meets the terms of the exclusion or exemption. In doing so, the person must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste or that the material is exempt from regulation. In addition, an owner or operator of a facility claiming that it actually is recycling a material must show that it has the necessary equipment to recycle that material.

g) Sham Recycling. A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling, as defined in 35 Ill. Adm. Code 720.143.

(Source: Amended at 42 Ill. Reg. 21673, effective November 19, 2018)