

WAC 173-303-019 Legitimacy criteria for recycling of hazardous secondary materials. Recycling hazardous secondary materials for the purpose of exclusion or exemption from the dangerous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this section.

(1) 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:

(a) Contributes valuable ingredients to a product or intermediate; or

(b) Replaces a catalyst or carrier in the recycling process; or

(c) Is the source of a valuable constituent recovered in the recycling process; or

(d) Is recovered or regenerated by the recycling process; or

(e) Is used as an effective substitute for a commercial product.

(2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

(a) 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; or

(b) Sold to a third party.

(3) The generator, recycler, or third party 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.

(4) The product of the recycling process must be comparable to a legitimate product or intermediate:

(a) 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 dangerous waste characteristic (as defined in WAC 173-303-090) or meet any dangerous waste criteria (as found in WAC 173-303-100) that analogous products do not exhibit; and

(ii) The concentrations of any dangerous constituents found in WAC 173-303-9905 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 dangerous constituents.

(b) 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

(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).

(c) If the product of the recycling process has levels of dangerous constituents (found in WAC 173-303-9905) that are not comparable to or unable to be compared to a legitimate product or intermediate per (a) and (b) of this subsection, 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.

(i) The recycling can be shown to be legitimate based on:

(A) Lack of exposure from toxics in the product;

(B) Lack of bioavailability of toxics in the product; or

(C) Other relevant considerations which show that the recycled product does not contain levels of dangerous constituents that pose a significant human health or environmental risk.

(ii) The documentation must include a certification statement that the recycling is legitimate and must be maintained on site for five years after the recycling operation has ceased.

(iii) The person performing the recycling must notify the department of this activity using ecology's site identification form.

[Statutory Authority: Chapters 70.105, 70.105D RCW and RCRA. WSR 19-04-038 (Order 16-03), § 173-303-019, filed 1/28/19, effective 4/28/19.]