



## BEST PRACTICES TO OPTIMIZE HAZARDOUS WASTE MANAGEMENT

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Businesses large and small generate a variety of [wastes](#) every day. In this country, many waste streams are defined as “hazardous wastes” subject to strict cradle-to-grave regulation by the U.S. Environmental Protection Agency and state environmental agencies pursuant to the [Resource Conservation and Recovery Act](#) (“RCRA”). For some companies, complying with hazardous waste regulations is a substantial part of their everyday business practices; other companies may not even realize that they generate hazardous wastes, let alone how to navigate the often complex rules governing their storage, transportation, recycling, disposal, recordkeeping and other requirements.

While mismanagement of hazardous waste often plagues inexperienced companies, even sophisticated businesses can be tripped up by the sometimes Byzantine RCRA regulations. Common violations by hazardous waste generators include failure to identify hazardous wastes, improper storage and labeling, lack of inspections and contingency planning, storage beyond time limits, sloppy paperwork, and use of unauthorized disposal facilities. The [price of noncompliance](#) can be steep, including civil (and in egregious cases, criminal) penalties as well as damage to a company’s “green” image.

Fortunately, many companies have found that certain best practices in hazardous waste management help to minimize the risk of regulatory noncompliance and, in some cases, reduce costs. These best practices include:

- **Make Solid Waste Determinations:** Review all waste streams, whether large or small, solid, liquid, or gaseous, for status as RCRA [“solid waste”](#) – materials cannot be regulated as hazardous wastes without first falling within the RCRA solid waste definition. This complex definition comprises “discarded” materials, including those that are recycled. However, many activities and materials are excluded from this definition, such as domestic sewage, reclamation of certain secondary materials, closed loop recycling through storage tanks, and recycling of used cathode ray tubes (e.g., computer monitors). These exclusions should be studied carefully for applicability to each waste stream.
- **Make Hazardous Waste Determinations:** Once a material is deemed a RCRA solid waste, evaluate whether it constitutes a [hazardous waste](#). Hazardous waste includes both several hundred “listed” substances enumerated in the regulations by chemical constituents and/or industrial processes, and substances that possess at least one hazardous waste “characteristic” (ignitability, corrosivity, reactivity, and toxicity). This determination may be made through laboratory testing (which can be expensive), or generator knowledge (e.g., information from material safety data sheets or trade associations). [Certain solid wastes are also excluded from hazardous waste regulation](#), such as fly ash from coal combustion, many mining wastes, and cement kiln dust. Prepare and maintain waste determination documentation to provide regulators if questioned.

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## OPTIMIZE HAZARDOUS WASTE MANAGEMENT (cont'd)

- Utilize Universal Waste and Used Oil Programs: The RCRA regulations provide streamlined options for managing certain waste streams in lieu of full hazardous waste requirements. These include specified [“universal wastes,”](#) which are common hazardous wastes such as batteries, pesticides, mercury-containing equipment, and lamps (fluorescent and other bulbs); and [“used oil”](#) consisting of any refined crude or synthetic oil that has been contaminated with impurities through use. Consider managing applicable waste streams under the universal waste and used oil rules wherever possible, to benefit from less-burdensome storage, recycling, and paperwork requirements.
- Track Generator Status: Generator obligations vary depending on the quantity of hazardous waste generated per month, including [“conditionally exempt small quantity generators”](#) (up to 220 lbs/mo.) subject to basic requirements; [“small quantity generators”](#) (between 220 and 2,200 lbs/mo.) subject to additional requirements; and [“large quantity generators”](#) (at least 2,200 lbs/mo.) subject to full regulation. To avoid managing hazardous waste under incorrect rules, track each facility’s monthly hazardous waste generation carefully to determine its generator status. Note that materials managed as universal waste or used oil may be excluded from monthly totals, and beware that quantity variations may move a facility to a more-regulated status for a limited period or longer.
- Minimize Waste Generation: Where possible, [reduce or eliminate hazardous waste generation](#) to cut management costs and regulatory burdens. Suggestions include not mixing nonhazardous with hazardous waste, changing materials or processes (e.g., replacing solvent-based with water-based parts cleaners), reuse or recycle materials back into the production process, and store and inspect products carefully to avoid leaks and spills.
- Research Transporters and TSDFs: To avoid regulatory noncompliance and possible liability for off-site waste disposal, perform due diligence when selecting hazardous waste [transporters](#) or [treatment, storage or disposal facilities](#) (“TSDFs”). Some information to consider includes compliance history, possession of required permits and approvals, insurance coverage, financial stability, and customer references.
- Emphasize Employee Training: All personnel with hazardous waste responsibilities should receive thorough introductory and refresher training to ensure that proper procedures are followed for waste storage, labeling, accumulation time tracking, [manifesting](#), emergency response, and other requirements. Document training session content and attendance to confirm compliance with RCRA training rules.
- Watch for State Variations: Most [states](#) are authorized by EPA to implement the hazardous waste program, and may deviate from the federal regulations as long as their program is no less stringent than the federal program. Therefore, some states choose not follow certain RCRA exclusions or other provisions, such as not recognizing conditionally exempt small quantity generator status or not adopting certain categories of universal waste. Evaluate regulations applicable in your facility’s state (and where your waste may travel through and be sent to a TSDf) for variations that may impact applicable requirements.
- Follow Regulatory Changes: EPA and state agencies frequently publish [proposed amendments](#) to regulations that can impact companies’ waste management practices and bottom lines. Keep abreast of rulemaking proposals, evaluate their potential effect on facility operations, and where significant consider providing comments on a proposal to shape the final rule.

As this list of best practices may suggest, running a successful hazardous waste management program requires significant technical and legal expertise. In-house counsel should try to ensure that their clients have the right team of professionals to implement these best practices in a way that fits their facilities, waste streams, and corporate culture.