

Subchapter 2: IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**§ 7-201 PURPOSE, SCOPE, APPLICABILITY**

This subchapter identifies or otherwise describes those wastes subject to regulation as hazardous wastes under this chapter and assigns EPA or Vermont “hazardous waste codes” to them. It establishes procedures for determining whether a waste is hazardous waste and for petitioning the addition or removal of a waste to or from the lists of hazardous wastes identified in this subchapter. It also identifies or references sampling, analytical and testing methods and procedures to be used for the purpose of establishing whether or not a waste is hazardous.

§ 7-202 HAZARDOUS WASTE DETERMINATION

- (a) “Hazardous Waste” means any waste or combination of wastes which meets the definition in § 7-103, including but not limited to:
- (1) Any waste which exhibits one or more of the characteristics described in §§ 7-205 through 7-208; except waste that is regulated because it exhibits one or more of the characteristics of hazardous waste identified in §§ 7-205 through 7-208, when the waste no longer exhibits any characteristic. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of **40 CFR Part 268**, even if they no longer exhibit a characteristic at the point of land disposal. Moreover, a waste that exhibits the characteristic of toxicity that has been land disposed shall never cease to be a hazardous waste;
 - (2) Any waste which is listed in §§ 7-210 through 7-215 except waste that is listed solely because it exhibits one or more of the characteristics of ignitability as defined under § 7-205, corrosivity as defined under § 7-206, or reactivity as defined under § 7-207 is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in §§ 7-205 through 7-208 of these regulations. However, wastes excluded under this section are subject to the requirements of **40 CFR Part 268** (as applicable), even if they no longer exhibit a characteristic at the point of land disposal;
 - (3) Any mixture of a solid waste and a hazardous waste except as exempted in § 7-203(k);
 - (4) Any waste generated from the treatment, storage, disposal, or use of a hazardous waste (i.e., sludge, spill residue, ash, emission control dust, leachate, and precipitation runoff which comes in contact with the waste itself) except:
 - (A) A material that is reclaimed from a waste and that is used beneficially is not a waste and hence not a hazardous waste under this provision unless

the reclaimed material is burned for energy recovery or used in a manner constituting disposal; and

- (B) Any waste generated from the treatment, storage, or disposal of hazardous waste that is listed in §§ 7-210 through 7-215 solely because it exhibits one or more of the characteristics of hazardous waste identified in §§ 7-205 through 7-207, is not a hazardous waste if the waste no longer exhibits any characteristic of hazardous waste. However, wastes that exhibit a characteristic at the point of generation are subject to the requirements of 40 CFR Part 268, even if they no longer exhibit a characteristic at the point of land disposal;
 - (5) Any waste derived from a waste listed in §§ 7-210 through 7-215;
 - (6) Any waste generated from the discharge or release of a material which exhibits a characteristic described in §§ 7-205 through 7-208 or is listed in §§ 7-210 through 7-215;
 - (7) Any residues from a container or from the inner liner of a container which held a material which exhibits a characteristic described in §§ 7-205 through 7-208 or is listed in §§ 7-210 through 7-215, except as exempted in § 7-203(j);
 - (8) Any waste transported into Vermont that is classified as hazardous waste in the state in which the waste was generated; and
 - (9) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in §§ 7-210 through 7-215. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix II).
- (b) A person who generates or who is in control of a waste must determine if that waste is a hazardous waste as described in subsection (a) of this section by using the following procedure:
- (1) Determine if the waste is excluded from regulation under § 7-203 or § 7-204.
 - (2) If the waste is not excluded from regulation, determine if the waste is listed as a hazardous waste in §§ 7-210 through 7-215.
 - (3) For purposes of compliance with 40 CFR Part 268 (incorporated by reference through § 7-106 of these regulations), or if the waste is not listed in §§ 7-210 through 7-215, determine whether the waste exhibits a hazardous waste characteristic as identified in §§ 7-205 through 7-208 by either:

- (A) Testing or analyzing the waste according to the methods and procedures set forth in §§ 7-205 through 7-208 and 7-219 as appropriate; or
- (B) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

Note: Waste that is listed as Vermont regulated hazardous waste under § 7-211 must be evaluated to determine whether or not it exhibits a hazardous waste characteristic.

- (4) If the waste is determined to be hazardous, the generator must refer to **40 CFR part 268** (incorporated by reference through § 7-106 of these regulations), and **subchapters 1, 3, 5, 6, 8 and 9** for possible exclusions or restrictions pertaining to management of the specific waste.
- (c) The determination of whether a waste is hazardous waste shall be made using either suitable available product constituent information or the sampling, analytical and test methods and procedures specified in §§ 7-205 through 7-208 and 7-219, as appropriate. The Secretary may require information to be submitted that either has been used to determine whether or not a waste is hazardous waste or that is necessary to make such a determination.
- (d) Copies of results from constituent analysis or testing of waste, or other product constituent information used to determine whether or not a waste is hazardous waste must be retained on-site by all generators in accordance with § 7-710(a)(2).
- (e) Each hazardous waste listed in §§ 7-210 through 7-215 is assigned an EPA or Vermont hazardous waste code that precedes the name of the waste. This code must be used in complying with the notification requirements of § 7-104, the land disposal restriction requirements of § 7-106, the marking requirements of § 7-311(f), and all applicable manifest, recordkeeping and reporting requirements under these regulations.
- (f) A waste that exhibits a hazardous characteristic as described in §§ 7-205 through 7-208 is assigned every EPA or Vermont hazardous waste code that is applicable pursuant to §§ 7-205 through 7-208. This (these) code(s) must be used in complying with the notification requirements of § 7-104, the land disposal restriction requirements of § 7-106, the marking requirements of § 7-311(f), and all applicable manifest, recordkeeping and reporting requirements under these regulations.
- (g) If a waste is identified by both EPA and Vermont hazardous waste codes and descriptions, the EPA hazardous waste code and description shall be used for the purposes of these regulations.
- (h) A military munition is a waste, therefore subject to a hazardous waste determination, if unexploded ordinance and contaminants are buried or disposed of on-range and the burial or disposal is not a result of product use.

- (i) An unused military munition is a waste, and subject to a hazardous waste determination, when any of the following occurs:
 - (1) The munition is abandoned by being disposed of, burned, detonated (except during intended use as specified in § 7-203(z)(1)), incinerated, or treated prior to disposal;
 - (2) The munition is removed from storage in a military magazine or other storage area for the purpose of being disposed of, burned, or incinerated, or treated prior to disposal;
 - (3) The munition is deteriorated or damaged (e.g., the integrity of the munition is compromised by cracks, leaks, or other damage) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes; or
 - (4) The munition has been declared a waste by an authorized military official.
- (j) A used or fired military munition is a waste, and subject to a hazardous waste determination:
 - (1) When transported off range or from the site of use, where the site of use is not a range, for the purposes of storage, reclamation, treatment, disposal, or treatment prior to disposal; or
 - (2) If recovered, collected, and then disposed of by burial, or landfilling either on or off a range.

§ 7-203 CONDITIONAL EXEMPTIONS

The following wastes are exempted from the provisions of these regulations:

- (a) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused.
- (b) Household sewage and any mixture of household sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment in accordance with the provisions of a permit issued under **10 V.S.A. chapter 47**.
- (c) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace as provided by **40 CFR § 266.112** (incorporated by reference through § 7-109(b)(1) of these regulations).

- (d) Mining overburden returned to the mine site.
- (e) Waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace as provided by **40 CFR § 266.112** (incorporated by reference through **§ 7-109(b)(1)** of these regulations). For purposes of this section, beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting [and/or autoclaving and/or chlorination]/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching. For the purposes of this section, waste from the processing of ores and minerals includes only those listed by **40 CFR § 261.4(b)(7)(ii)** as generated.
- (f) Waste containing radioactive waste when it meets the eligibility criteria and conditions of **40 CFR § 261.3(h)**.
- (g) In the case of any waste consisting of, containing, or derived from any waste or any product or constituent listed in **§§ 7-210 through 7-215** of this subchapter, when it has been determined by the Secretary that the waste is not hazardous pursuant to the delisting procedures of **§ 7-217 or § 7-218**.
- (h) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste treatment manufacturing unit until it exits the unit in which it was generated provided:
 - (1) The unit is not a surface impoundment; and
 - (2) The hazardous waste remains in the unit for less than ninety (90) days after the unit ceases to be operated for manufacturing, storage, or transportation of a product or raw material.
- (i) Samples as follows:
 - (1) Except as provided in **subsection (i)(2) of this section**, samples collected for the sole purpose of testing to determine their properties, characteristics or composition when:
 - (A) The sample is being transported to a laboratory for the purpose of testing;
 - (B) The sample is being transported back to the sample collector after testing;

- (C) The sample is being stored by the sample collector before transport to a laboratory for testing;
 - (D) The sample is being stored in a laboratory before testing;
 - (E) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
 - (F) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).
- (2) In order to qualify for the exemption in **subsections (i)(1)(A) and (B) of this section**, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:
- (A) Comply with U. S. Department of Transportation (DOT), U. S. Postal Service (USPS) and any other applicable shipping requirements; or
 - (B) Comply with the following requirements if the sample collector determines that DOT, USPS or other shipping requirements do not apply to the shipment of the sample:
 - (i) Assure that the following accompanies the sample:
 - (aa) The sample collector's name, mailing address and telephone number;
 - (bb) The laboratory's name, mailing address and telephone number;
 - (cc) The quantity of the sample;
 - (dd) The date of shipment; and
 - (ee) A description of the sample.
 - (ii) Package the sample so that it does not leak, spill, or vaporize from its packaging.
- (3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in **subsection (i)(1) of this section**.
- (4) Treatability study samples as provided in **40 CFR §§ 261.4(e) and (f)**.

- (j) Containers and inner liners from containers of hazardous waste provided that the containers and inner liners are empty. Containers and inner liners are empty under the following conditions:
- (1) For those containers or inner liners which have held hazardous waste, when all material has been removed using the practices commonly employed to remove materials from that type of container, and
 - (A) No more than one inch of residue remains on the bottom of the container or inner liner; and
 - (B) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size; or
 - (C) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.
 - (2) For those containers that held a hazardous waste that is a compressed gas, when the pressure in the container approaches atmospheric pressure.
 - (3) For those containers or inner liners which have held acutely hazardous waste, pesticidal waste, or obsolete pesticide products:
 - (A) When the container or inner liner has been triple-rinsed with a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;
 - (B) When the container or inner liner is cleaned by a method which the generator has demonstrated to achieve equivalent removal; or
 - (C) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.
- (k) Mixtures of solid waste and hazardous waste provided that:
- (1) The hazardous waste in the mixture is listed in **§§ 7-210 through 7-215** solely because it exhibits one or more of the characteristics of hazardous waste identified in **§§ 7-205 through 7-207**, and the resultant mixture no longer exhibits any characteristic. However, wastes that exhibit a characteristic at the point of generation are subject to the requirements of **40 CFR Part 268**, even if they no longer exhibit a characteristic at the point of land disposal.

- (2) The hazardous waste in the mixture is listed in §§ 7-210 through 7-215 solely because it exhibits one or more of the characteristics of hazardous waste identified in §§ 7-205 through 7-207, and the solid waste is excluded from regulation under **subsection (e) of this section**, and the resultant mixture no longer exhibits any hazardous waste characteristic for which the hazardous waste in the mixture was listed. However, wastes that exhibit a characteristic at the point of generation are subject to the requirements of **40 CFR Part 268**, even if they no longer exhibit a characteristic at the point of land disposal.
- (3) The hazardous waste in the mixture is listed in §§ 7-210 through 7-215 and the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either § 402 or § 307(b) of the **Clean Water Act** (including wastewater at facilities which have eliminated the discharge of wastewater) as specified in **40 CFR § 261.3(a)(2)(iv)**.
- (4) Nonwastewater mixtures are still subject to the requirements of **40 CFR Part 268** (incorporated by reference by § 7-106 of these regulations), even if they no longer exhibit a characteristic at the point of land disposal.

Note: Dilution of hazardous waste subject to the land disposal restrictions of 40 CFR Part 268 is prohibited pursuant to **40 CFR § 268.3** (incorporated by reference through § 7-106 of these regulations).

- (l) Water-miscible metal cutting and grinding fluid waste that does not exhibit a characteristic of hazardous waste as defined in §§ 7-205 through 7-208 provided:
 - (1) It is recycled or treated on-site (e.g., centrifugation, evaporation, filtration and ultrafiltration) or sent off-site for treatment; and

Note: Evaporation equipment must be approved in accordance with Vermont’s Air Pollution Control Regulations.
 - (2) Containers and/or tanks holding water-miscible metal cutting and grinding fluid are:
 - (A) Marked with words that identify the contents;
 - (B) Kept closed except to add or remove spent material;
 - (C) In good condition (i.e., no severe rusting, apparent structural defects or deterioration);
 - (D) Stored on an impervious surface, and if stored out-of-doors, within a structure that sheds rain and snow; and
 - (3) If the waste is subject to freezing and expansion, mechanical or physical means are employed to prevent freezing; and

- (4) Any residue resulting from on-site recycling or treatment is managed either as used oil in accordance with the requirements of **subchapter 8**, or in accordance with applicable hazardous waste management requirements of **subchapters 1 through 7**; and
 - (5) Any water resulting from on-site treatment is discharged in accordance with **10 V.S.A. chapter 47** (for indirect injection well, and direct discharges) and **chapter 48** (for groundwater protection); and
 - (6) Any water-miscible metal cutting and grinding fluid waste sent off-site for treatment are offered for transport only to a transporter permitted according to the requirements of **subchapter 4**.
- (m) Wood ash subject to regulation as hazardous waste only because it exhibits the characteristic of corrosivity described in **§ 7-206(a)(3)** provided the ash is stored in a location that is either:
- (1) Protected from precipitation; or
 - (2) Secure from public access (e.g., fenced) and has a sign posted warning of the corrosive hazard of wet wood ash.
- (n) Used oil that meets the criteria of the VT02 hazardous waste code and/or exhibits a hazardous waste characteristic, is not subject to the requirements of **subchapters 3 through 7** of these regulations, but is subject to the Used Oil Management Standards of **subchapter 8**.
- Note:** Pursuant to **10 V.S.A. § 6621a**, no person shall knowingly dispose of used oil in a landfill.
- (o) Non-terne plated used oil filters that are not mixed with wastes listed in **§§ 7-210 through 7-215** if:
- (1) These oil filters have been gravity drained using one of the following methods:
 - (A) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;
 - (B) Hot-draining and crushing;
 - (C) Hot-draining and dismantling; or
 - (D) Any other equivalent hot-draining method that will remove used oil; or

(E) Draining and crushing using a mechanical, pneumatic, or hydraulic device designed for the purpose of crushing oil filters and effectively removing the oil; and

(2) All drained oils are collected and managed subject to these regulations.

Note: The Agency recommends that drained oil filters be recycled as scrap metal.

(p) Petroleum contaminated soil provided:

(1) The soil does not exhibit a characteristic of hazardous waste as defined in §§ 7-205 through 7-208, with the exception that soil subject to the corrective action requirements of 40 CFR Part 280 is not subject to regulation as hazardous waste solely for the waste codes of D018 through D043 of §7-208; and

(2) The soil does not contain waste listed in §§ 7-210 through 7-215, with the exception that soil may contain waste identified by the VT02 hazardous waste code; and

(3) The soil is evaluated by field screening, review of any available information about the contaminant (e.g., materials safety data sheet information) and, if necessary, laboratory analysis and/or testing to establish the type and concentration of the contaminant(s) present; and

Note: Field screening and laboratory analysis or testing must be conducted by an independent professional consulting firm or laboratory using a method or methods that are either identified under § 7-219 of these regulations or that are otherwise approved by the Secretary.

(4) The soil is managed (e.g., assessed, monitored, excavated, stored, treated, transported, or stockpiled) in a manner that is protective of human health and the environment (refer to **Chapter 3** of the Agency’s “**Investigation and Remediation of Contaminated Properties Procedure**” which is available from the Secretary upon request).

(q) Industrial discharges in compliance with **10 V.S.A. chapter 47**. This exemption applies only to the actual point source discharge. It does not exclude wastewaters while they are being collected, stored, or treated before discharge nor does it exclude sludges that are generated by industrial wastewater treatment.

(r) Pesticidal wastes that are both generated and disposed of by the same farmer provided:

(1) The emptied pesticide container is triple-rinsed in accordance with the provisions of **subsection (j) of this section**; and

- (2) The pesticide residues are disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label.
- (s) The wastes listed below are exempt from regulation under **subchapters 1 through 7** of these regulations except as specified in **subchapter 9** of these regulations. The following wastes are subject to regulation as universal wastes under subchapter 9:
 - (1) Batteries as described in § 7-902;
 - (2) Pesticides as described in § 7-903;
 - (3) Thermostats as described in § 7-904;
 - (4) PCB-containing fluorescent light ballasts as described in § 7-905;
 - (5) Lamps as described in § 7-906;
 - (6) Mercury-containing devices as described in § 7-907; and
 - (7) Cathode ray tubes (CRTs) as described in § 7-908.
- (t) PCB-containing dielectric fluid and, with the exception of fluorescent light ballasts, electric equipment containing such fluid authorized for use and regulated under **40 CFR Part 761** of the Toxic Substances Control Act and that are hazardous only because they either meet the criteria of the VT01 hazardous waste identification code or fail the test for the Toxicity Characteristic (hazardous waste codes D018 through D043 only). This exemption is not applicable to waste contaminated with PCB-containing dielectric fluid.
- (u) The following materials provided they do not exhibit a characteristic identified in §§ 7-205 through 7-208:
 - (1) Hazardous debris as defined in 40 CFR Part 268 (Land Disposal Restrictions incorporated by reference through § 7-106) that has been treated using one of the required extraction or destruction technologies specified in **Table 1 of 40 CFR § 268.45**; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or
 - (2) Debris as defined in 40 CFR Part 268 (Land Disposal Restrictions incorporated by reference through § 7-106) that the Secretary, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.
- (v) Waste which consists of discarded arsenical-treated wood or wood products which fails the test for the toxicity characteristic for hazardous waste codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons

who utilize the arsenical-treated wood and wood products for these materials' intended end use.

- (w) Used oil contaminated rags or wipes that do not exhibit a hazardous waste characteristic provided:
 - (1) The rags or wipes are picked up and cleaned under a contractual agreement with a commercial laundering service;
 - (2) Free liquid is not present in the rags or wipes as per test method 9095 of EPA Publication SW 846 (the paint filter liquids test); and
 - (3) Prior to being picked up by the launderer, the rags or wipes are accumulated and stored on-site in containers that are:
 - (A) Marked with words that identify the contents as used rags or wipes destined for laundering;
 - (B) Kept closed except to add or remove spent material;

Note: If a bag is used to accumulate and/or store used oil contaminated rags or wipes, it must be kept in a closed container.

 - (C) In good condition (i.e., no rips, tears, severe rusting, apparent structural defects or deterioration); and
 - (D) Stored on an impervious surface, and if stored out-of-doors, within a structure that sheds rain and snow.

- (x) Reusable absorbent material contaminated with used oil that does not exhibit a hazardous waste characteristic provided that:
 - (1) The contaminated absorbent material is processed and reused on-site, any residual material that results from processing is managed in accordance with these regulations, and any contaminated water resulting from on-site processing is discharged in accordance with **10 V.S.A. chapter 47** (for indirect injection well, and direct discharges) and **chapter 48** (for groundwater protection); and
 - (2) Prior to being processed, the absorbent materials are accumulated and stored on-site in containers that are:
 - (A) Marked with words that identify the contents;
 - (B) Kept closed except to add or remove spent material;

- (C) In good condition (i.e., no severe rusting, apparent structural defects or deterioration); and
 - (D) Stored on an impervious surface, and if stored out-of-doors, within a structure that sheds rain and snow.
- (y) Reserved
- (z) A military munition when:
- (1) Used for its intended purpose, including:
 - (A) Use for training military personnel or explosives and munitions emergency response specialists;
 - (B) Use in research, development, testing, or evaluation of military munitions, weapons, or weapon systems; or
 - (C) Recovery, collection, and on-range destruction of unexploded ordinance and munitions fragments during range clearance activities at active or inactive ranges.
 - (2) An unused military munition, or component of that munition, is being repaired, reused, recycled, reclaimed, disassembled, reconfigured or otherwise subjected to materials recovery activities, unless those activities include use constituting disposal or burning for energy recovery.
- (aa) Consumer products that are available to the general public in the marketplace which were treated with perfluorooctanoic acid, perfluorooctanesulfonic acid or a material containing perfluorooctanoic acid or perfluorooctanesulfonic acid.
- (bb) Remediation wastes from an environmental response action that contain perfluorooctanoic acid, perfluorooctanesulfonic acid or a material containing perfluorooctanoic acid or perfluorooctanesulfonic acid and when those remediation wastes disposed in accordance with a corrective action plan or disposal plan approved by the Secretary.
- (cc) Sludges from wastewater treatment facilities, collected leachate from solid waste management facilities, and residuals from the treatment of drinking water that contain perfluorooctanoic acid, perfluorooctanesulfonic acid or a material containing perfluorooctanoic acid or perfluorooctanesulfonic acid and when those remediation wastes are disposed in accordance with a corrective action plan or disposal plan approved by the Secretary.

§ 7-204 RECYCLING EXEMPTIONS

The following wastes are exempted from the provisions of these regulations if they are recycled as specified:

Note: Refer to **subchapter 6** for standards applicable to hazardous waste recycling activities not exempted under this section.

- (a) (1) Hazardous wastes, other than the wastes described in **subsections (a)(2)(A) through (D) of this section**, that are recycled on-site by being:
 - (A) Used or reused as ingredients in an industrial process to make a product, provided the wastes are not first being processed or reclaimed; or
 - (B) Used or reused as effective substitutes for commercial products, provided the wastes are not first being processed or reclaimed; or
 - (C) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The wastes 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 wastes must be managed such that there is no placement on the land.
- (2) The following materials are not exempt from the provisions of these regulations, even if they are recycled according to **subsections (a)(1)(A) through (a)(1)(C) of this section**:
 - (A) Except as provided in **subsection (k) of this section**, materials used in a manner constituting disposal, or used to produce products that are applied to the land; or
 - (B) Except as provided in **subsection (l) of this section**, materials burned for energy recovery, used to produce a fuel, or contained in fuels; or
 - (C) Materials accumulated speculatively as defined in **40 CFR § 261.1(c)(8)**; or
 - (D) Inherently waste-like materials listed in **40 CFR §§ 261.2(d)(1) and (d)(2)**.
- (b) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose provided those solutions are managed prior to reuse according to the requirements of **40 CFR § 261.4(a)(9)(iii)**.

- (c) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood provided those wastewaters are managed prior to reuse according to the requirements of **40 CFR § 261.4(a)(9)(iii)**.
- (d) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.
- (e) Scrap metal that is recycled.
- (f) Spent lead-acid batteries that are reclaimed or regenerated, provided:
 - (1) Persons who generate or collect spent lead-acid batteries, who regenerate spent lead-acid batteries, or who store spent lead-acid batteries but do not reclaim them (other than spent lead-acid batteries that are to be regenerated) store such batteries under cover on an impervious surface; and
 - (2) Transport of spent lead-acid batteries is done in compliance with **49 CFR Parts 171 through 177**; and
 - (3) Owners or operators of facilities which store lead-acid batteries (other than spent lead-acid batteries that are to be regenerated) before reclaiming them comply with the requirements of **40 CFR Part 266, Subpart G**.
- (g) Recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these metals provided:
 - (1) Persons who generate, transport, store or recycle these recyclable materials comply with **40 CFR Part 266, Subpart F**.
 - (2) Any generator or facility accumulating or storing these recyclable materials from which precious metals are reclaimed comply with any additional standards and requirements specified by the Secretary as necessary to protect human health and the environment. In making such determination, the Secretary shall use the standards and procedures specified in **40 CFR §§ 260.40 and 260.41**.
- (h) Intact or shredded circuit boards being recycled provided that they are:
 - (1) Stored in containers sufficient to prevent a release to the environment prior to recovery; and
 - (2) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

- (i) Spent ethylene glycol or water-based ethylene glycol solutions (e.g., antifreeze) that are subject to regulation as hazardous waste for meeting only the criteria of the VT08 hazardous waste code provided that:
 - (1) The spent ethylene glycol or water-based ethylene glycol solution is recycled for reuse (e.g., filtered) and/or treated for reuse (e.g., additives added); and
 - (2) Containers and/or tanks used to hold spent ethylene glycol or water-based ethylene glycol solution are:
 - (A) Marked with words that identify the contents;
 - (B) Kept closed except to add or remove spent material;
 - (C) In good condition (i.e., no severe rusting, apparent structural defects or deterioration);
 - (D) Stored on an impervious surface, and if stored out-of-doors, within a structure that sheds rain and snow; and
 - (3) If the spent ethylene glycol or water-based ethylene glycol solution is subject to freezing and expansion, mechanical or physical means are employed to prevent freezing; and
 - (4) Any residue resulting from on-site recycling and/or treatment that is hazardous waste is managed as hazardous waste.
- (j) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.
- (k) Commercial chemical products that are applied to the land provided that land application is their ordinary manner of use.
- (l) Commercial chemical products that are themselves fuels (e.g., gasoline, aviation fuel, diesel fuel) provided:
 - (1) The commercial chemical product is burned for energy recovery, or is mixed or reclaimed to produce a fuel;
 - (2) The commercial chemical product is not mixed with non-fuel hazardous waste;
 - (3) The generator maintains a written record of any commercial chemical product shipped off-site that includes:
 - (A) The type and amount of material shipped;

- (B) The date of generation;
 - (C) The date of shipment; and
 - (D) The name, address and phone number of the receiving facility;
- (4) Prior to shipment off-site, the commercial chemical product is accumulated and stored in containers and/or tanks that are:
- (A) Marked to identify the date the container or tank becomes full and with words that identify the contents as a usable fuel product;
 - (B) Kept closed except when adding or removing material;
 - (C) In good condition (i.e., no severe rusting, apparent structural defects or deterioration);
 - (D) Kept on an impervious surface, and if stored out-of-doors, within a structure that sheds rain and snow; and
 - (E) Handled and stored in a manner that minimizes the possibility of fire, explosion or a release or discharge to air, soil, groundwater, or surface water;
- (5) If the commercial chemical product is subject to freezing and expansion, mechanical or physical means are employed to prevent freezing; and
- (6) The commercial chemical product is shipped within 45 days from the date the container or tank becomes full to: a facility that burns the product for energy recovery, or mixes or reclaims the product to produce a fuel; a designated facility; or an aggregation facility that meets the following:
- (A) The owner of the facility has requested and received approval from the Secretary, using a form provided by the Secretary, to operate an aggregation facility. Any aggregation facility already in operations on the effective date of these regulations shall comply with the requirements of this section within 90 days of the effective date of these regulations.
 - (B) Commercial chemical product is not stored at the aggregation facility for more than 30 days.
 - (C) All commercial chemical product stored at the aggregation facility is shipped to: a facility that burns the product for energy recovery, or mixes or reclaims the product to produce a fuel; or a designated facility.

- (D) All commercial chemical product stored at the aggregation facility meets the following requirements:
- (i) Containers must be kept closed except when adding or removing material, be marked with words that identify the contents as a usable fuel product, and be stored:
 - (aa) In a manner to prevent leakage or rupture;
 - (bb) Upon an impervious surface;
 - (cc) Such that the required marking is visible;
 - (dd) With sufficient aisle space between rows of containers to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation. In no circumstance shall the aisle space be less than twenty-four (24) inches wide;
 - (ee) In an area with secondary containment capable of holding 110% of the capacity of the largest container to be placed in temporary storage, or 10% of the total design capacity of the storage area, whichever is greater;
 - (ff) Only with wastes or other materials that are compatible with the commercial chemical product;
 - (gg) Within a structure that sheds rain and snow; and
 - (hh) If the commercial chemical product is subject to freezing and expansion, in an area where mechanical or physical means are employed to prevent freezing.
 - (ii) Where applicable, underground storage tanks (USTs) holding commercial chemical product shall be:
 - (aa) Permitted, operated, and maintained in accordance with the Vermont Underground Storage Tank Regulations; and
 - (bb) Equipped with fill pipes that are marked or labeled to clearly identify the contents of the UST as a usable fuel product.
 - (iii) Where applicable, above-ground storage tanks (including unregistered tank trailers) holding a commercial chemical product shall be:

- (aa) Installed and operated in accordance with Vermont Department of Labor Standards;
 - (bb) Clearly marked with words that identify the contents as a usable fuel product;
 - (cc) Managed in such a manner as to prevent rupture of the tank and to ensure that no release occurs; and
 - (dd) If located out-of-doors, equipped with secondary containment as specified in **40 CFR §§ 279.45(e) and (f)**.
- (E) The owner or operator of the aggregation facility maintains a written operating log that identifies the date that commercial chemical product is received, the amount received, the location from where it was received, the date of shipment off-site, the amount shipped off site, and the location where it was sent.
 - (F) The owner of the aggregation facility maintains a written contingency plan for the facility as described in **§ 7-308(b)(14)**.
 - (G) The owner of the aggregation facility has certified, using the form submitted to the Secretary pursuant to subsection (A) of this section, that he or she will comply with the closure requirements of **§ 7-309(c)**.

§ 7-205 CHARACTERISTIC OF IGNITABILITY

- (a) A waste is an ignitable hazardous waste if a representative sample of the waste has any of the following properties:
 - (1) It is a liquid and has a flash point of less than 60°C, which is approximately 140°F as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D 93-79 or D 93-80 (incorporated by reference, see **§ 7-219(d)**), or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D 3278-78 (incorporated by reference, see **§ 7-219(d)**). However, an aqueous solution of alcohol that contains less than 24 percent alcohol by volume will not be considered an ignitable waste;
 - (2) It is not a liquid and is capable under standard temperature and pressure of causing fire through friction, absorption of moisture, or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard, or it is a solid-phase material and is determined to be an “ignitable solid” using the SW-846 Method 1030 test method;

- (3) It is an ignitable compressed gas as defined in **40 CFR § 261.21(a)(3)(i)** and shall be characterized as ignitable as determined by the test methods described in **40 CFR § 261.21(a)(3)(ii)**; or
- (4) It is an oxidizer. An oxidizer for the purposes of this subchapter is a substance such as chlorate, perchlorate, nitrate, nitrite, permanganate, or inorganic peroxide that yields oxygen readily to stimulate the combustion of organic matter. An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals must be classed as an organic peroxide unless:
 - (A) The material meets the definition of a Class A explosive or a Class B explosive, as defined in **40 CFR § 261.23(a)(8)**, in which case it must be classed as an explosive;
 - (B) The material is forbidden to be offered for transportation according to **49 CFR 172.101 and 49 CFR 173.21**;
 - (C) It is determined that the predominant hazard of the material containing an organic peroxide is other than that of an organic peroxide; or
 - (D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation, it has been determined that the material does not present a hazard in transportation.
- (b) A waste that exhibits the characteristic of ignitability has the EPA hazardous waste code of D001.

§ 7-206 CHARACTERISTIC OF CORROSIVITY

- (a) A waste is a corrosive hazardous waste if a representative sample of the waste has any of the following properties:
 - (1) It is an aqueous solution which has a pH of less than or equal to 2 or greater than or equal to 12.5 as determined by a pH meter using Method 9040C in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (incorporated by reference, see **§ 7-219(d)**); or
 - (2) It is a liquid and corrodes steel (type SAE 1020) at a rate greater than 0.250 inch per year at a test temperature of 55°C (130°F) as determined by Method 1110A in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (incorporated by reference, see **§ 7-219(d)**); or

- (3) It is a solid phase material at standard temperature and pressure which when mixed 50% by weight with distilled water yields a pH less than or equal to 2 or greater than or equal to 12.5 as determined by a pH meter using Method 9045 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 (incorporated by reference, see § 7-219(d)).
- (b) A waste that exhibits the characteristic of corrosivity because it meets the criteria of **subsection (a)(1) or (a)(2) of this section** has the EPA hazardous waste code of D002. A waste that exhibits the characteristic of corrosivity because it meets the criteria of **subsection (a)(3) of this section** has the hazardous waste code of VT20.

§ 7-207 CHARACTERISTIC OF REACTIVITY

- (a) A waste is a reactive hazardous waste if a representative sample of the waste has any of the following properties:
 - (1) It is normally unstable and readily undergoes violent change without detonating;
 - (2) It reacts violently with water;
 - (3) It forms potentially explosive mixtures with water;
 - (4) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or to the environment;
 - (5) It is a cyanide or sulfide bearing waste which, when exposed to a pH condition between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or to the environment;
 - (6) It is capable of detonation or an explosive reaction if it is subjected to a strong initiating source or if heated under confinement;
 - (7) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure;
 - (8) It is a forbidden explosive as defined in **49 CFR § 173.54**, or is a Division 1.1, 1.2 or 1.3 explosive as defined in **49 CFR §§ 173.50 and 173.53**.
- (b) A waste that exhibits the characteristic of reactivity has the EPA hazardous waste code of D003.

§ 7-208 CHARACTERISTIC OF TOXICITY

- (a) A waste is a hazardous waste if, using the Toxicity Characteristic Leaching Procedure (TCLP), test Method 1311 in "Test Methods for Evaluating Solid Waste,

Physical/Chemical Methods," EPA Publication SW-846 (incorporated by reference, see § 7-219(d)), the extract from a representative sample of the waste contains any of the contaminants listed in **Table 1** at the concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5% filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purposes of this section.

- (b) A waste that exhibits the characteristic of toxicity has all applicable EPA hazardous waste codes specified in **Table 1** which correspond to any of the toxic contaminants listed in Table 1 that cause it to be hazardous.

Table 1
MAXIMUM CONCENTRATION OF CONTAMINANTS
FOR THE CHARACTERISTIC OF TOXICITY

Hazardous Waste Code	Contaminant	CAS Number	Regulatory Level (mg/L)
D004	Arsenic	7440-38-2	5.0
D005	Barium	7440-39-3	100.0
D006	Cadmium	7440-43-9	1.0
D007	Chromium	7440-47-3	5.0
D008	Lead	7439-92-1	5.0
D009	Mercury	7439-97-6	0.2
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D012	Endrin(1,2,3,4,10,10-Hexachloro-1,7-epoxy-1,4,4a,5,6,7,8 8a-octahydro-1,4-endo, endo-5,8-dimethano-naphthalene)	72-20-8	0.02
D013	Lindane (1,2,3,4,5,6-Hexachlorocyclohexane, gamma isomer)	58-89-9	0.4
D014	Methoxychlor (1,1,1-Trichloro-2,2-bis[p-methoxyphenyl] ethane)	72-43-5	10.0
D015	Toxaphene (C ₁₀ H ₁₀ C ₁₈ , Technical chlorinated camphene, 67 to 69 percent chlorine)	8001-35-2	0.5
D016	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	10.0
D017	2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	93-72-1	1.0
D018	Benzene	71-43-2	0.5
D019	Carbon tetrachloride	56-23-5	0.5
D020	Chlordane	57-74-9	0.03
D021	Chlorobenzene	108-90-7	100.0

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Hazardous Waste Code	Contaminant	CAS Number	Regulatory Level (mg/L)
D022	Chloroform	67-66-3	6.0
D023	o-Cresol	95-48-7	200.0 ¹
D024	m-Cresol	108-39-4	200.0 ¹
D025	p-Cresol	106-44-5	200.0 ¹
D026	Cresol	200.0 ¹
D027	1,4-Dichlorobenzene	106-46-7	7.5
D028	1,2-Dichloroethane	107-06-2	0.5
D029	1,1-Dichloroethylene	75-35-4	0.7
D030	2,4-Dinitrotoluene	121-14-2	0.13 ²
D031	Heptachlor (and its epoxide)	76-44-8	0.008
D032	Hexachlorobenzene	118-74-1	0.13 ²
D033	Hexachlorobutadiene	87-68-3	0.5
D034	Hexachloroethane	67-72-1	3.0
D035	Methyl ethyl ketone	78-93-3	200.0
D036	Nitrobenzene	98-95-3	2.0
D037	Pentachlorophenol	87-86-5	100.0
D038	Pyridine	110-86-1	5.0 ²
D039	Tetrachloroethylene	127-18-4	0.7
D040	Trichloroethylene	79-01-6	0.5
D041	2,4,5-Trichlorophenol	95-95-4	400.0
D042	2,4,6-Trichlorophenol	88-06-2	2.0
D043	Vinyl Chloride	75-01-4	0.2

Note: “CAS” Number means Chemical Abstract Service Number.

§ 7-209 LISTS OF HAZARDOUS WASTES

(a) Reserved.

¹ If o-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/l.

² Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.

VERMONT HAZARDOUS WASTE MANAGEMENT REGULATIONS

- (b) The following hazardous wastes listed in § 7-210 are subject to the exclusion limits for acutely hazardous wastes established in § 7-306(a): hazardous waste codes F020, F021, F022, F023, F026, and F027.
- (c) The wastes listed in §§ 7-210, 7-211, 7-212, 7-214 and 7-215 are identified as toxicity characteristic waste (E), toxic waste (T), reactive waste (R), corrosive waste (C), ignitable waste (I), acutely hazardous waste (H), or a combination thereof.

§ 7-210 HAZARDOUS WASTES FROM NON-SPECIFIC SOURCES

The following wastes are listed hazardous wastes from non-specific sources:

Hazardous Waste Code	Hazardous Wastes from Non-Specific Sources	Hazard
Generic F001	The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F002	The following spent halogenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluor-ethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004 or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F003	The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004 and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I)*
F004	The following spent non-halogenated solvents: Cresols and cresylic acid and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)

VERMONT HAZARDOUS WASTE MANAGEMENT REGULATIONS

Hazardous Waste Code	Hazardous Wastes from Non-Specific Sources	Hazard
F005	The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I,T)
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating of carbon steel; and (6) chemical etching and milling of aluminum.	(T)
F007	Spent cyanide plating bath solutions from electroplating operations.	(R,T)
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	(R,T)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	(R,T)
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	(R,T)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	(R,T)
F012	Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process.	(T)
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	(T)
F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol).	(H)
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.	(H)
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	(H)

VERMONT HAZARDOUS WASTE MANAGEMENT REGULATIONS

Hazardous Waste Code	Hazardous Wastes from Non-Specific Sources	Hazard
F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol).	(H)
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in Appendix I).	(T)
F025	Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.	(T)
F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, or hexachlorobenzene under alkaline conditions.	(H)
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component).	(H)
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F023, F026, and F027.	(T)
F032	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with 40 CFR § 261.35 or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)

VERMONT HAZARDOUS WASTE MANAGEMENT REGULATIONS

Hazardous Waste Code	Hazardous Wastes from Non-Specific Sources	Hazard
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in 40 CFR § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. (Refer to 40 CFR § 261.31(b) for listing specific definitions.)	(T)
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge-Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in dissolved air flotation (DAF) units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in 40 CFR § 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing. (Refer to 40 CFR § 261.31(b) for listing specific definitions.)	(T)

VERMONT HAZARDOUS WASTE MANAGEMENT REGULATIONS

Hazardous Waste Code	Hazardous Wastes from Non-Specific Sources	Hazard
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Subpart D of 40 CFR Part 261 (Leachate resulting from the disposal of one or more of the following EPA hazardous wastes and no other hazardous wastes retains its EPA hazardous waste code(s): F020, F021, F022, F026, F027, and/or F028.).	(T)

*(I, T) should be used to specify mixtures that are ignitable and contain toxic constituents.

§ 7-211 VERMONT LISTED HAZARDOUS WASTES

The following wastes are listed in Vermont as hazardous wastes:

Note: A waste that exhibits a hazardous waste characteristic or that is federally listed must be identified by its EPA hazardous waste code (refer to **§ 7-202(g)**).

Hazardous Waste Code	Vermont Listed Hazardous Waste	Hazard
VT01	Wastes containing polychlorinated biphenyls (PCB) in concentrations equal or greater than 50 parts per million. Note: Certain waste PCB-containing dielectric fluids, and electric equipment containing such fluid are exempted under § 7-203(t) ; PCB-containing fluorescent light ballasts managed in accordance with the universal waste management standards of subchapter 9 are exempted under § 7-203(s) .	(T)
VT02	Waste containing greater than 5% by weight of petroleum distillates with melting points of less than 100°F, including but not limited to kerosene, fuel oil, hydraulic oils, lubricating oils, penetrating oils, tramp oils, quenching oils, and crankcase and automotive oils. Note: Wastes with a flashpoint less than 140°F are classified as D001 (ignitable). Note: Exemptions are provided for: used oil under § 7-203(n) ; oil filters under § 7-203(o) ; and petroleum contaminated soil under § 7-203(p) .	(I,T)
VT03	Waste water-miscible metal cutting and grinding fluid. Note: Certain recycled or treated water-miscible metal cutting and grinding fluid wastes are exempted under § 7-203(l) .	(T)
VT06	Pesticidal wastes and obsolete pesticidal products not specifically listed in subchapter 2. Note: Certain pesticides managed in accordance with the universal waste management standards of subchapter 9 are exempted under § 7-203(s) .	(T)

VERMONT HAZARDOUS WASTE MANAGEMENT REGULATIONS

Hazardous Waste Code	Vermont Listed Hazardous Waste	Hazard
VT08	Waste ethylene glycol and solutions containing greater than 700 parts per million of ethylene glycol (e.g., coolants, antifreeze). Note: Spent ethylene glycol and water-based ethylene glycol solutions that are recycled for reuse are exempted under § 7-204(i).	(T)
VT11	Wastes determined to be hazardous pursuant to § 7-216.	(I,T,C,R,H)
VT20	A solid material that when mixed with an equal weight of distilled water causes the liquid fraction of the mixture to exhibit the properties of the corrosivity characteristic as specified in § 7-206(a)(3).	(C,R)
VT 21	Liquid wastes containing perfluorooctanoic acid (PFOA) in concentrations equal to or greater than 20 parts per trillion (ppt). For PFOA and PFOS, the standard of 20 ppt applies to the sum of the two substances (e.g. if the PFOA concentration is 15 ppt and the PFOS concentration is 6 ppt then there is an exceedance of the standard).	(T)
VT 22	Liquid wastes containing perfluorooctanesulfonic acid (PFOS) in concentrations equal to or greater than 20 parts per trillion (ppt). For PFOA and PFOS, the standard of 20 ppt applies to the sum of the two substances (e.g. if the PFOA concentration is 15 ppt and the PFOS concentration is 6 ppt then there is an exceedance of the standard).	(T)
VT99	Non-hazardous waste. Note: This hazardous waste code is to be used only for non-hazardous waste shipped using a hazardous waste manifest.	N/A

§ 7-212 HAZARDOUS WASTES FROM SPECIFIC SOURCES

Hazardous wastes from specific sources are listed in **Appendix I**.

§ 7-213 HAZARDOUS CONSTITUENT WASTES

Wastes containing any of the hazardous constituents listed in **Appendix II** are hazardous wastes when:

- (a) The waste is not excluded from regulation under § 7-203 or § 7-204; and
- (b) The Secretary concludes, following the listing procedures in § 7-216, that the waste meets the definition of hazardous waste in § 7-103.

§ 7-214 HAZARDOUS WASTES WHICH ARE DISCARDED COMMERCIAL CHEMICAL PRODUCTS

The following materials or items are hazardous waste if and when they are discarded or intended to be discarded, when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use, when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

- (a) Any commercial chemical product or manufacturing chemical intermediate having the generic name listed in **Appendix III**;

Note: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in..." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in **Appendix III**. Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in **Appendix III**, such waste will be listed in either **§ 7-210** or **§ 7-212** or will be identified as a hazardous waste by the characteristics set forth in **§§ 7-205 through 7-208**.

- (b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in **Appendix III**;
- (c) Reserved.
- (d) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in **Appendix III**, unless the container is empty as defined in **§ 7-203(j)**.

Note: Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Secretary considers the residue to be intended for discard, and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

- (e) Any residue or contaminated soil, water or other debris resulting from the clean-up of a release or discharge into or on any land or water of any commercial chemical product or

manufacturing chemical intermediate having the generic name listed in **Appendix III**, or any residue or contaminated soil, water or other debris resulting from the clean-up of a release or discharge into or on any land or water of any off-specification chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in **Appendix III**.

Note: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability), and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.

§ 7-215 ACUTELY HAZARDOUS WASTES

The following materials or items are acutely hazardous wastes if and when they are discarded or intended to be discarded, when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use, when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of the original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

- (a) Any commercial chemical product or manufacturing chemical intermediate having the generic name listed in **Appendix IV**;

Note: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in . . ." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in **Appendix IV**. Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in **Appendix IV**, such waste will be listed in either § 7-210 or § 7-212 or will be identified as a hazardous waste by the characteristics set forth in §§ 7-205 through 7-208.

- (b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in **Appendix IV**.
- (c) Reserved.
- (d) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in **Appendix III**, unless the container is empty as defined in § 7-203(j).

Note: Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Secretary considers the residue to be intended for discard, and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

- (e) Any residue or contaminated soil, water or other debris resulting from the clean-up of a release or discharge into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in **Appendix IV**, or any residue or contaminated soil, water or other debris resulting from the cleanup of a release or discharge into or on any land or water of any off-specification chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in **Appendix IV**.

Note: The primary hazardous properties of these materials are indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound is only listed for toxicity.

§ 7-216 LISTING OF A HAZARDOUS WASTE

- (a) Any person requesting the addition of a generic class of wastes to the lists at §§ 7-210 through 7-215, must file a petition for rulemaking with the Secretary. Prior to adopting a rule listing a generic class of wastes as a hazardous waste, the Secretary shall consider the following factors:
- (1) The toxicity of the waste;
 - (2) The waste's persistence and degradability in the environment;
 - (3) The waste's potential to concentrate or bioaccumulate in tissue;
 - (4) The waste's potential to cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms; and
 - (5) The waste's potential to have an unusually destructive effect on water quality if discharged to ground or surface water.
- (b) For generators whose waste is not listed as a hazardous waste, the Secretary, upon petition or on his or her own motion, may, on a case-by-case basis, make the determination that a waste generated by a particular generator or treated, stored or disposed of by a particular facility, meets the definition of hazardous waste at § 7-103.

- (1) Upon making the determination that a particular waste is hazardous, the Secretary shall notify the waste generator of this determination by certified letter. The letter shall include a fact sheet which briefly sets forth the principal facts and significant factual, methodological, and policy questions concerning the hazard determination.
 - (2) Within 30 days following receipt of a hazard determination, the generator may request a hearing before the Secretary to contest that determination. The request for hearing shall state the technical and legal questions at issue and shall contain the necessary documents to support the request.
 - (3) If no request for hearing is filed within 30 days, the generator shall be deemed to have accepted the hazard determination for the waste in question.
- (c) When making a determination under subsection (b) of this section, the Secretary shall examine and consider the following factors:
- (1) The nature of the hazard presented by the waste;
 - (2) The amount and concentration of all hazardous constituents in the waste;
 - (3) The potential of all hazardous constituents in the waste or any toxic degradation product of such hazardous constituents to migrate from the waste into the environment;
 - (4) The persistence of all hazardous constituents in the waste or any toxic degradation product of such hazardous constituents;
 - (5) The degree to which all hazardous constituents in the waste or any toxic degradation product of such hazardous constituents bioaccumulate in ecosystems;
 - (6) The plausible types of improper management to which the waste could be subjected;
 - (7) The quantity of waste involved;
 - (8) The nature and severity of the damage to human health and the environment that has occurred as a result of the improper management of the type of waste involved;
 - (9) Actions taken by other governmental agencies or regulatory programs based on the hazard to human health or the environment posed by the waste or any hazardous constituent in the waste; and
 - (10) Such other factors as may be appropriate.

- (d) Prior to making any determination under subsection (b) of this section, the Secretary shall give notice to the Commissioner of Health and the Commissioner of Labor and may then receive advice and information on the health effects of such determination.

§ 7-217 DELISTING OF A HAZARDOUS WASTE

- (a) Generators may petition the Secretary to classify their waste as non-hazardous, if they generate either a waste listed at **§§ 7-210 through 7-215** or a mixture which contains a waste listed at **§§ 7-210 through 7-215**.
- (b) The Secretary, upon petition or his or her own motion, may make the determination that a waste which is generated by a particular generator or treated, stored, or disposed of by a particular facility does not meet the definition of hazardous waste at **§ 7-103** subject to the restrictions listed below.
- (c) Any person seeking to exclude a waste at a particular generating facility from lists in **Subpart D of 40 CFR Part 261** may petition for a regulatory amendment under **40 CFR § 260.20 and § 260.22**. The Administrator of EPA shall retain the authority to exclude such wastes. Delisting determinations made by the EPA Administrator shall take effect in Vermont upon issuance of a “concurrence” letter sent by the Secretary to the EPA Administrator.
- (d) For any waste listed at **§§ 7-210 through 7-215** of this subchapter and not listed by EPA as a hazardous waste, the petition to delist shall be made on the delisting form entitled “**Petition Procedures for the Listing and Delisting of Hazardous Waste,**” provided by the Secretary.
- (e) After receipt of a petition under this section, the Secretary may request any additional information which may be reasonably required to evaluate the petition.
- (f) The Secretary shall evaluate each delisting petition using the procedures described in **§ 7-216(b)**.
- (g) When making a determination under this section, the Secretary shall examine and consider the factors in **§ 7-216(c)**.
- (h) Except as provided in **§ 7-218**, prior to making any determination under this section, the Secretary shall give notice to the Commissioner of Health and the Commissioner of Labor and may then receive advice and information on the health effects of such determination.

§ 7-218 DELISTING OF SPILL CLEAN-UP DEBRIS AND RESIDUES

The Secretary may delist clean-up debris and residues which are not regulated by EPA as hazardous wastes resulting from an emergency action in **§ 7-105**, after considering the factors in **§ 7-216(c)**, without consulting the Commissioners of Health and Labor.

§ 7-219 SAMPLING, ANALYTICAL AND TESTING METHODOLOGIES

- (a) The appropriate analytical and test methods to determine whether a sample exhibits a hazardous waste characteristic are specified in **§§ 7-205 through 7-208**.
- (b) The appropriate analytical procedures to determine whether a sample contains a given toxic constituent are specified in chapter two ("Choosing the Correct Procedure") of EPA Publication SW-846 ("Test Methods for Evaluating Solid Waste Physical/Chemical Methods"), as incorporated by reference in **subsection (d) of this section**. Prior to final sampling and analysis method selection, the individual should consult the specific section or method described in SW-846 for additional guidance on which of the approved methods should be employed for a specific sample analysis situation.

(c) **Representative Sampling Methods**

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed in **Appendix I to 40 CFR Part 261**, for sampling waste with properties similar to the indicated materials, will be considered by the Agency to be representative of the waste.

- (d) When used in 40 CFR parts 260 through 270 or in these regulations, the publications listed in **40 CFR § 260.11** are hereby incorporated by reference.
- (e) Any person seeking to add a sampling, analytical or test method to the methods referenced by this section shall petition the Administrator of EPA in accordance with **40 CFR §§ 260.20 and 260.21**.