**Section 720.143 Legitimate Recycling of Hazardous Secondary Materials**

1. Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not the subject of legitimate recycling is discarded material and is a solid waste. A determination that an activity is legitimate recycling must address all the requirements of this subsection (a) and must consider the requirements of subsection (b).

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 fulfills one of the following criteria:

A) The material contributes valuable ingredients to a product or intermediate;

B) The material replaces a catalyst or carrier in the recycling process;

C) The material is the source of a valuable constituent recovered in the recycling process;

D) The material is recovered or regenerated by the recycling process; or

E) The material 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 either of the following is true:

A) The product or intermediate is sold to a third party; or

B) The product or intermediate is 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.

3) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and which are not recovered immediately are discarded material.

b) The following factor must be considered in making a determination as to the overall legitimacy of a specific recycling activity.

1) The product of the recycling process fulfills all of the following criteria:

A) The product must not contain significant concentrations of any hazardous constituents found in Appendix H of 35 Ill. Adm. Code 721 that are not found in analogous products;

B) The product must not contain concentrations of hazardous constituents found in Appendix H of 35 Ill. Adm. Code 721 at levels that are significantly elevated from those found in analogous products; and

C) The product must not exhibit a hazardous characteristic (as defined in Subpart C of 35 Ill. Adm. Code 721) that analogous products do not exhibit.

2) In making a determination that a hazardous secondary material is legitimately recycled, persons must evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor in this subsection (b) is not met, then this fact may indicate that the material is not legitimately recycled. However, the factor in this subsection (b) does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.

(Source: Amended at 43 Ill. Reg. 446, effective December 6, 2018)