

For example, in Year One, Contractor X contracts to supply \$500 of hydraulic mulch to a State agency using appropriated Federal funds to purchase the hydraulic mulch. Therefore, in Year One, Contractor X is a "procuring agency." During Year One, Contractor X also purchases hydraulic mulch for its own use and to supply the requirements of its other customers, with total purchases of hydraulic mulch exceeding \$10,000. In Year One, while Contractor X is a procuring agency, Contractor X is not subject to the section 6002 requirements for hydraulic mulch supplied to the State agency because the contract price does not exceed \$10,000. In Year Two, Contractor X is subject to section 6002 requirements for hydraulic mulch provided to the State agency for the procurement regardless of the amount of the contracted purchase, because, while a "procuring agency" in Year One, it purchased in excess of \$10,000 of hydraulic mulch.

In another example, in Year One, Contractor Y purchases \$10,000 of hydraulic mulch but none was purchased on behalf of a government agency using appropriated Federal funds. In Year One, Contractor Y is not a procuring agency. In Year Two, Contractor Y contracts to supply less than \$10,000 of hydraulic mulch to a State agency using appropriated Federal funds for the purchase. In Year Two, Contractor Y is a procuring agency, but is not subject to section 6002 requirements for its purchases of hydraulic mulch because it was not a procuring agency during the previous year when it acquired in excess of \$10,000 of hydraulic mulch.

3. Definitions

In the proposed CPG, EPA explained that the definitions found in the five existing guidelines would be incorporated into a new part 247 (59 FR 18863, April 20, 1994). The new part 247 would include the relevant definitions found in RCRA, the definitions of items, and definitions of terms used in the companion RMAN. EPA has concluded that it will be easier for procuring agencies to use the definitions if they are limited to those terms used in the CPG. Therefore, in the final CPG, the definitions section contains only terms used in the CPG.

4. Affirmative Procurement Program

Comment: Several commenters expressed concern with the administrative requirements associated with individual item designations. In particular, many commenters objected to the requirement that procuring agencies develop affirmative

procurement programs for all designated items, including items that they may not purchase or that they are unable to obtain with recovered materials content.

Response: In the proposed CPG (59 FR 18864, April 20, 1994), EPA recommended that procuring agencies develop one comprehensive affirmative procurement program with a structure that provides for the integration of new items as they are designated. EPA believes that developing a single affirmative procurement program will substantially reduce procuring agencies' administrative burdens under RCRA that result from today's item designations.

EPA also recommends that if a procuring agency does not purchase a specific designated item, it should simply include a statement in its preference program to that effect. Similarly, if a procuring agency is unable to obtain a particular item for one or more of the reasons cited in RCRA section 6002(c)(1), a similar statement should be included in the preference program along with the appropriate justification.

For example, if a state agency procures cement and concrete using appropriated Federal funds and has determined that ground granulated blast furnace slag is not available in the state due to high transportation costs, then that state agency would include the following or similar statement in its preference program:

The State currently is unable to use ground granulated blast furnace slag in cement and concrete products due to the high transportation costs of this material. Therefore, this State has concluded that, based on RCRA section 6002(c)(1)(C), it is not required to procure this material.

EPA notes that, in accordance with RCRA section 6002(i)(2)(D), it is the procuring agency's responsibility to monitor and regularly update its affirmative procurement program. Should an item that was previously unobtainable become available, then the procuring agency should modify its affirmative procurement program accordingly.

B. Items Proposed for Designation

No commenters opposed the designations of the following items: Structural fiberboard, laminated paperboard, patio blocks, traffic barricades, traffic cones, playground surfaces, running tracks, hydraulic mulch, plastic desktop accessories, and plastic trash bags. Therefore, today, EPA is promulgating these item designations as proposed. The following subsections discuss the significant comments

pertaining to the remaining proposed item designations.

1. Engine Coolants

Comment: Two commenters asked that EPA clarify that the proposed designation applies only to engine coolants used in vehicles and not to other glycol-based coolants used in other types of machinery such as generator motors.

Response: EPA believed that inclusion of engine coolants in the Vehicular Products Category clarifies that the designation is limited to vehicular engine coolants and does not apply to other non-vehicular coolants. However, to remove any ambiguity, EPA is revising the engine coolant designation to specify that it applies to vehicles only.

Comment: Two commenters urged EPA to limit the designation to ethylene-glycol based engine coolants and exclude other types of engine coolants. These two commenters stated that propylene glycol is not currently being reclaimed and that, therefore, propylene glycol-based engine coolants do not meet the statutory requirements for designation. Furthermore, one commenter noted that U.S. automobile manufacturers "currently disallow the use of propylene glycol engine coolants in their products. Products which are not ethylene glycol-based fail to meet the appropriate chemical properties requirement and are therefore not qualified for use in American Automobile Manufacturers Association members' vehicles."

Response: EPA believes that propylene glycol-based engine coolants are not currently being recovered and processed into reclaimed engine coolants. However, EPA is unaware of any technical reason that would prevent this from occurring. RCRA directs EPA to "designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section (Section 6002 of RCRA)." Rather than precluding procuring agencies from purchasing propylene glycol-based engine coolants and reclaiming them, EPA concludes that it is inappropriate to limit the item designation to ethylene glycol-based engine coolants only. If propylene glycol-based engine coolants do not meet a procuring agency's performance requirements, the agency need not purchase them. Thus, EPA has decided to finalize the engine coolants designation as proposed.