



The States' Perspective

**Definition of Solid Waste
Supplemental Rule Proposal
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State Survey

- ★ HW Recycling Task Force developed electronic survey - Survey Monkey
- ★ E-mailed to all the States & Territories
- ★ 24 questions
- ★ 24 States responded



State Survey

- ★ Task Force developed & submitted comments representing the majority opinion of responding States
- ★ Majority of States likely to adopt rule if changes are made to facilitate oversight of recycling

Major Rule Components

- ★ HSM generated & reclaimed under the control of the generator
 - On-site
 - By the same person at off-site location
 - Tolling contractor/batch manufacturer
- ★ Other contractual reclamation arrangements
- ★ Transferred to another person for reclamation



Major Rule Components

- ✦ Notification
- ✦ Additional record keeping
- ✦ Legitimacy factors
- ✦ Other Issues



HSM generated & reclaimed under the control of the generator

- ★ On-site reclamation

- Majority of States support

- Promotes recycling
- HSM likely to be properly managed
- Conserves resources



HSM generated & reclaimed under the control of the generator

- ★ HSM generated and reclaimed by same person at an off-site facility

- 18 States support or support w/ changes

- Promotes company wide recycling
- Needed changes
 - Recordkeeping: HSM shipments, document legitimacy factors
 - Notification: identify reclaimer, certification statement, annual notification

- 6 States do not support or don't know

- Removes all regulation & oversight, stretch of concept
- Proper management & legitimate recycling not ensured



HSM generated & reclaimed under the control of the generator

- ☀ Contract tolling company & batch manufacturer

- 16 States support or support w/ changes

- Encourages recycling, conserves resources
- Proper management likely
- Needed changes
 - Recordkeeping: shipments, amount HSM recycled
 - Due diligence, document legitimacy, annual notification

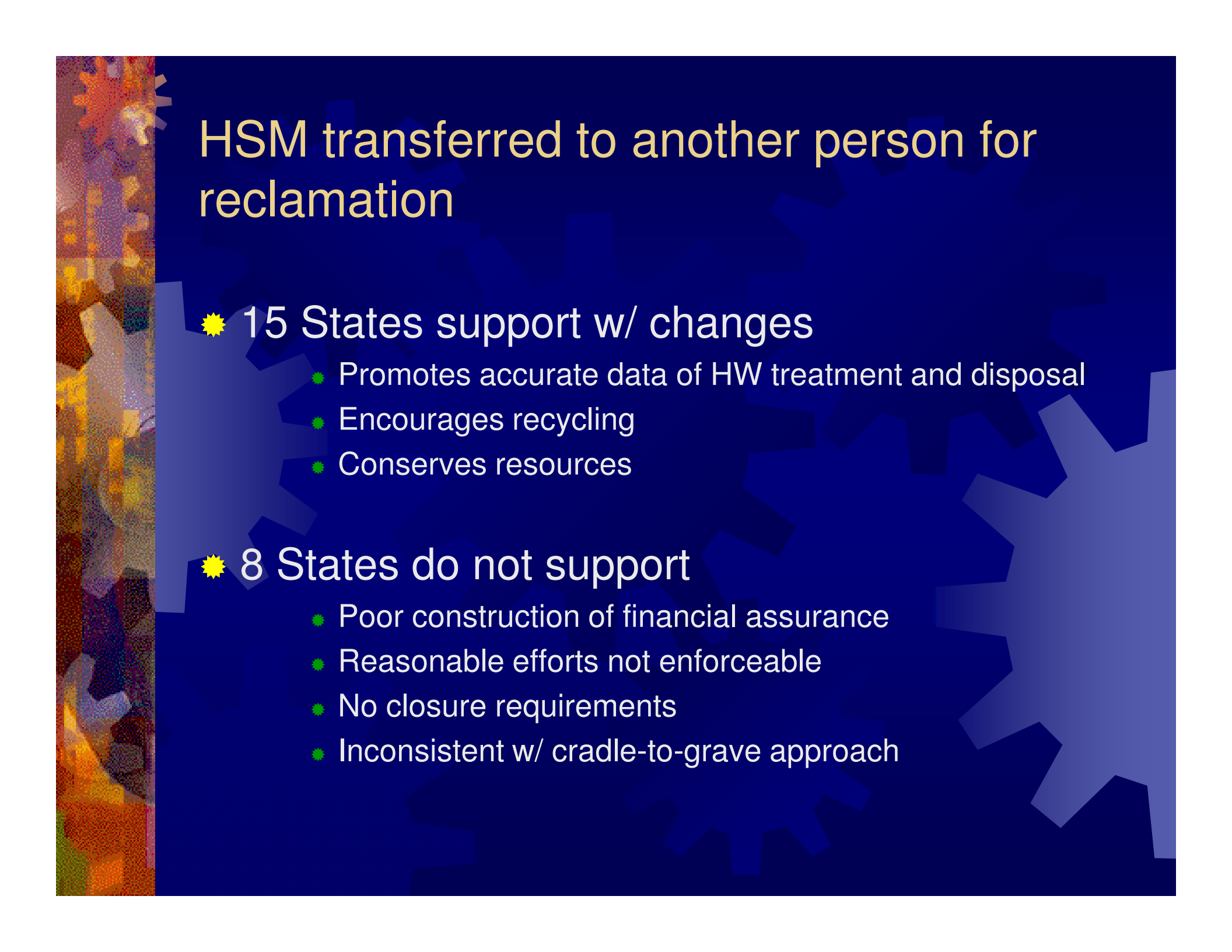
- 8 States do not support or don't know

- Proper management & legitimate recycling not ensured
- A stretch of the concept “under the control of the generator”



HSM generated & reclaimed under the control of the generator

- ✦ Expansion of tolling reclamation to other contractual arrangements
 - Not supported by Majority of States
 - This is transferred-based, can't verify legitimacy, totally unregulated, insufficient recordkeeping & notification
 - Some States would support w/ changes
 - All companies were manufacturers, more notification & recordkeeping
 - Pre-approval & financial assurance



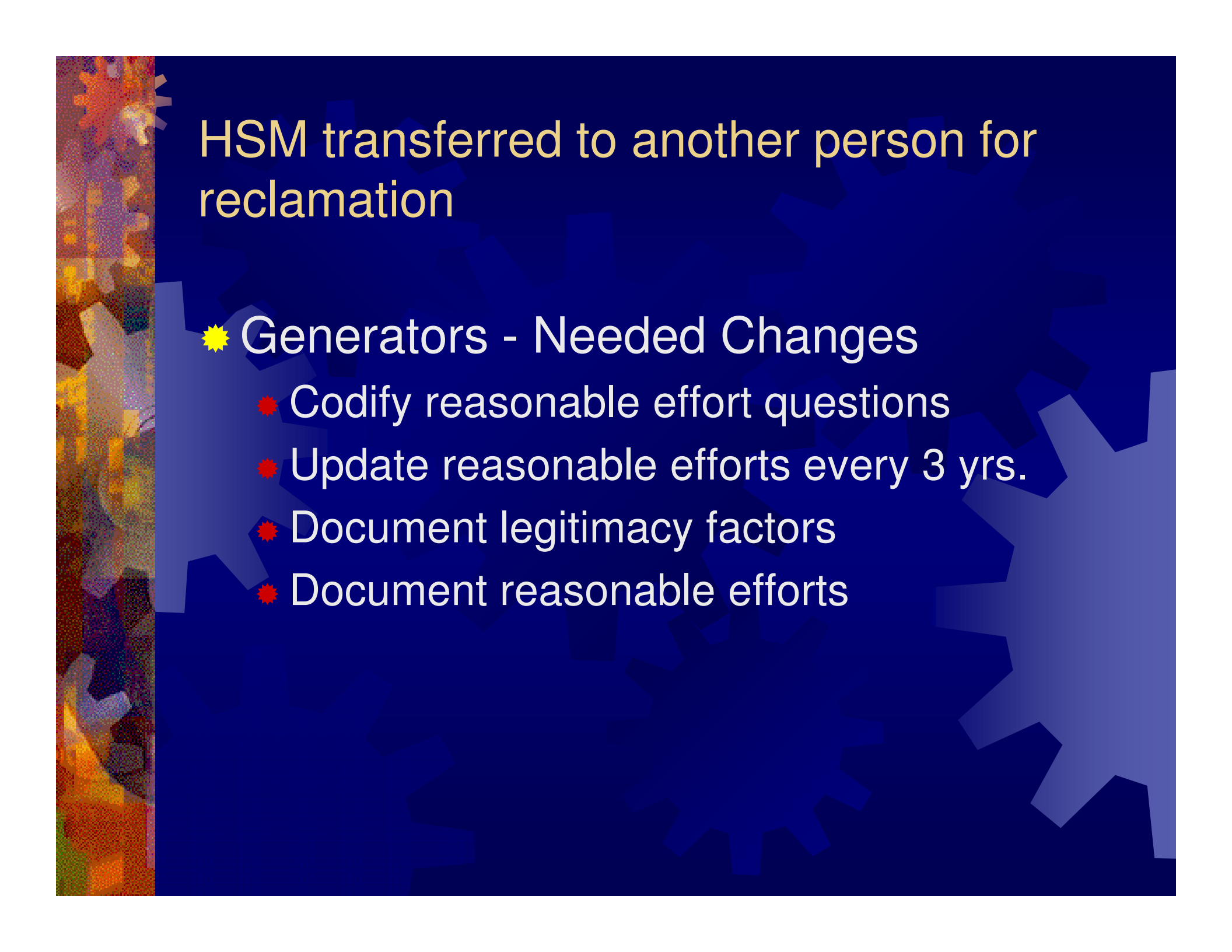
HSM transferred to another person for reclamation

☀ 15 States support w/ changes

- Promotes accurate data of HW treatment and disposal
- Encourages recycling
- Conserves resources

☀ 8 States do not support

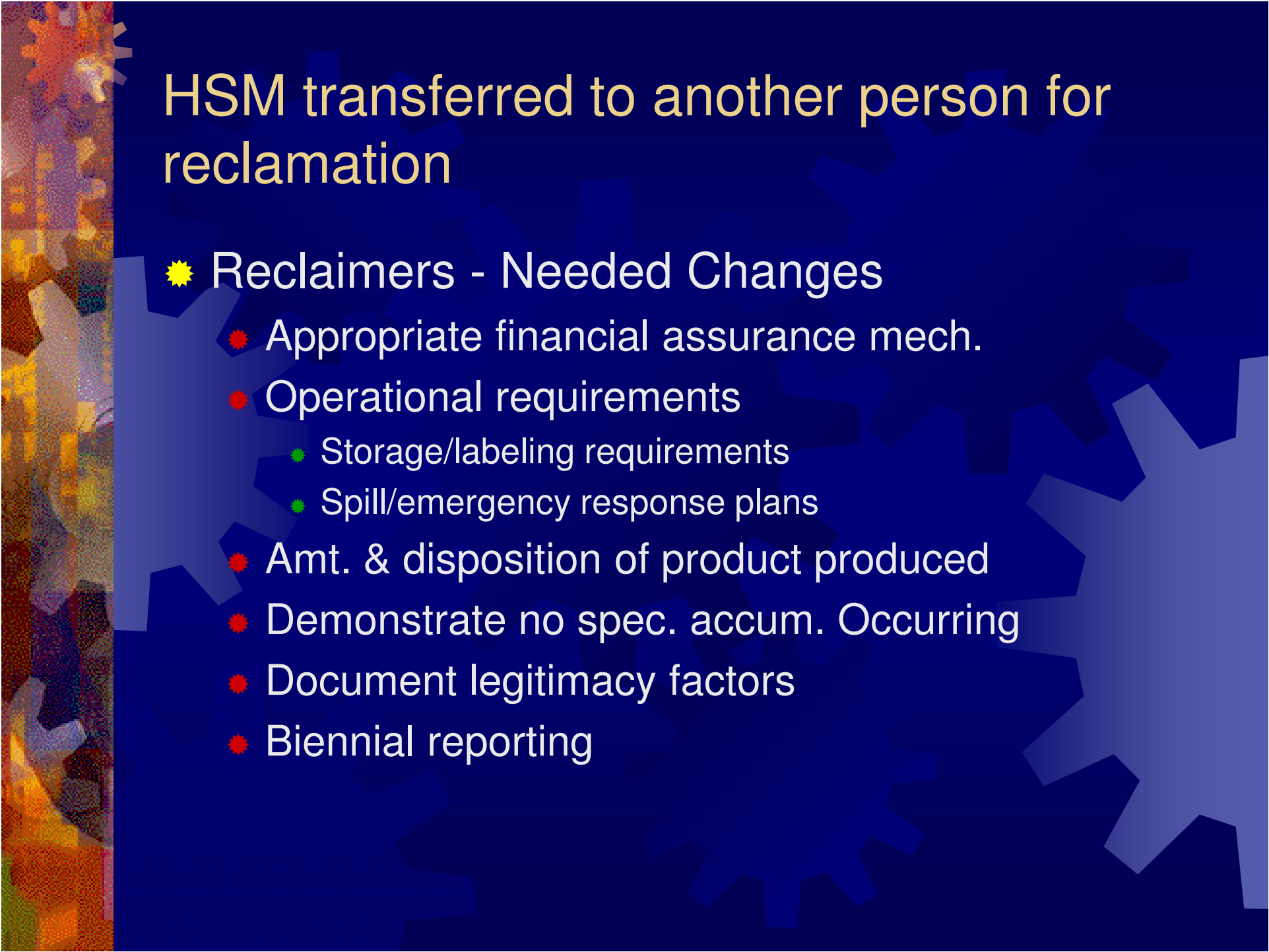
- Poor construction of financial assurance
- Reasonable efforts not enforceable
- No closure requirements
- Inconsistent w/ cradle-to-grave approach

The background is a dark blue field with several large, semi-transparent gears of various shades of blue. On the left side, there is a vertical strip with a colorful, abstract, and somewhat pixelated pattern in shades of orange, yellow, and brown. The text is overlaid on this background.

HSM transferred to another person for reclamation

★ Generators - Needed Changes

- Codify reasonable effort questions
- Update reasonable efforts every 3 yrs.
- Document legitimacy factors
- Document reasonable efforts



HSM transferred to another person for reclamation

★ Reclaimers - Needed Changes

- ★ Appropriate financial assurance mech.
- ★ Operational requirements
 - Storage/labeling requirements
 - Spill/emergency response plans
- ★ Amt. & disposition of product produced
- ★ Demonstrate no spec. accum. Occurring
- ★ Document legitimacy factors
- ★ Biennial reporting



Notification

☀ Needed Changes

- Generator provide name/address of reclaimer
- Est. amount of HSM being reclaimed
- Description of reclamation process
- Certification statement
- Obtain EPA ID number
- Annual re-notification



Recordkeeping

- ★ Purpose

- ★ Compile credible recycling information
- ★ Ensure generators/reclaimers meet conditions for exclusion
- ★ Promote consistency
- ★ Ensure legitimacy

- ★ Biennial reporting for reclaimers



Legitimacy Factors

- ✦ Management of HSM*
- ✦ Useful contribution to process/product
- ✦ Valuable product produced
- ✦ Concentration of hazardous constituents in product*

* Proposed - Factor not mandatory; should be considered by recycler



Factor 1 HSM Management

- ☀ 16 States - needs to be mandatory factor
 - Needed factor to distinguish recycling from waste management
 - Codification provides consistency in implementation & enforcement
 - Cannot enforce guidance
 - To effectively distinguish legitimate recycling from waste management, need uniform standards



Factor 2

Useful contribution

- ★ 20 States – needs to be mandatory factor
 - Essential in distinguishing legitimate recycling from waste treatment
 - If no value is gained from HSM then HSM is not being recycled; it's being treated



Factor 3

Valuable product

- ☀ 20 States – needs to be mandatory factor
 - ✿ Essential in distinguishing legitimate recycling from waste treatment
 - ✿ If the HSM or product is not wanted/valued by a third party or the recycler for use then the HSM is not being recycled; it's being treated
 - ✿ Economics of recycling should be considered under this factor



Factor 4

Toxics in HSM-derived Product

- ☀ 20 States – needs to be mandatory factor
 - To protect against products with increased toxicity (i.e., constituent levels higher than normal product) from entering the market place

Other Issues

- ✦ Land-based storage of HSM
 - ✦ States strongly oppose unregulated storage on the land
 - ✦ Needs to meet stringent design & operational requirements currently in place
 - ✦ Burden of proof that HSM is contained is on generator/reclaimer

Other Issues

- ✦ Use RCRAInfo for notification
 - ✦ Unanimous State support
- ✦ Petitions of Non-waste Classification
 - ✦ No State consensus reached
- ✦ Sequential reclamation by multiple facilities
 - ✦ Opposed by States
 - Difficult to ensure legitimacy
 - Inadequate tracking system



Don't miss the conclusion!

Final rule expected Summer 2008