

obtain the desired end-product. An example could be where a solid-form secondary material is separated into different fractions and then smelted to recover metal constituents.

In some cases, reclamation essentially involves extraction of a valuable component from a waste or other material. An example of this type of reclamation occurs in the mineral processing industry, such as when smelter by-products are processed in a series of steps to successively extract several different precious metals. Another type of reclamation involves "regenerating" used products or materials so that they can be reused for their original purpose, or some other purpose. A common example of this type of reclamation is found in the steel making industry, where "pickling" acids are used to remove scale and other impurities from steel, eventually lose their acidic properties, and must be reclaimed before they can be used again as pickling agents. In this case, the reclamation process may yield both regenerated pickling acid, as well as a marketable iron oxide product.

3. What Types of Materials Would Be Eligible for the Proposed Exclusion?

Under the current regulations, certain hazardous secondary materials that are recycled by being reclaimed are considered wastes (see 40 CFR 261.2(c)(3)). These materials include sludges and by-products that are listed hazardous wastes (see listings in 40 CFR 261.31 and 40 CFR 261.32), scrap metal, and listed or characteristic "spent materials." As defined in 40 CFR 261.1(c), materials are "spent" when they are used and as a result of contamination can no longer serve the purpose for which they were produced without processing. Additional guidance on the definition of "spent material" may be found on the Agency's "RCRA Online" Internet data base, at <http://yosemite.epa.gov/OSW/rcra.nsf/Documents/8D46F076812A58D0852565DA006F0565>.

An example of a spent material would be a solvent that is used for degreasing metal parts, and which eventually becomes too contaminated for further use in degreasing. Similarly, under the current regulations some types of scrap metal are wastes prior to reclamation (although they are subject to less stringent Subtitle C regulations under 40 CFR 261.6).

Some materials that are "generated and reclaimed in a continuous process within the same industry" (as proposed today) would not be eligible for the exclusion. As specified in proposed 40 CFR 261.2(g)(1), the exclusion would not

apply to recycling of materials that are "inherently waste-like" (see 40 CFR 261.2(d)), materials used in "a manner constituting disposal" (see 40 CFR 261.2(c)(1) and part 266, subpart C), or materials that are "burned for energy recovery" (see 40 CFR 261.2(c)(2)). Any of these recycling practices could potentially be conducted intra-industry. Nevertheless, these particular recycling practices have been identified by the Agency as being akin to discard, and therefore materials that are recycled in these specific ways are explicitly identified as wastes under the current regulations. The Agency does not intend to change the way these waste materials are regulated in today's proposal. We believe that the original logic for maintaining regulatory jurisdiction over these materials remains valid.

The basic premise of today's proposed exclusion is that materials that are "generated and reclaimed in a continuous process within the same industry" (as defined in this proposal) would not be considered wastes for Subtitle C purposes. Generally, when a material is reclaimed within the same industry that generated it, the material can remain useful to that industry, and thus is not discarded. In effect, the industry has not "finished" with the material; rather, it is to the advantage of the industry to continue using it as a substitute for other types of materials.

While the Agency believes that the types of material that would be eligible for the exclusion in today's proposal would generally not be discarded, we believe there may also be more technical reasons for excluding such materials. For one, processes and facilities that operate within the same industry are likely to use similar raw materials and process them in a similar manner. They are also likely to have expertise as to the types of secondary materials produced by their industry, their potential for recycling, and appropriate practices for managing such materials. For these practical reasons, EPA believes that the potential for environmental harm from de-regulating this type of recycling practice is likely to be relatively small compared to other types of recycling practices.

While we are proposing to define materials generated and reclaimed within the same industry as in-process materials that are not solid wastes for purposes of Subtitle C, this is not to say that all materials legitimately recycled between different industries are always solid wastes. In fact, the Agency has promulgated several specific exclusions to the definition of solid waste for materials that are generated in one industry and reclaimed in another. We

are not proposing to revisit those exclusions.

4. What Is Meant by a "Continuous Process Within the Same Industry?"

Proposed 40 CFR 261.2(g)(2) would establish the general regulatory framework for defining "continuous process within the same industry," and thus, how recycling must be conducted in order to qualify for the exclusion. As explained below, we are co-proposing today two different options for defining "continuous process within the same industry." The two options differ only in that one option (Option #2) would treat differently reclamation facilities that also accept hazardous wastes generated from different industries. We are co-proposing these two options today because the Agency believes both are viable and appropriate approaches and deserve equal consideration by commenters.

Co-Proposal Option 1: Under this option, hazardous secondary materials would have to be generated and reclaimed within a single industry in order to qualify for the exclusion (the definition of "industry" for the purpose of this proposal is discussed in section III.A.6 of this preamble, below). Thus, for example, if a hazardous secondary material was generated in the motor vehicle manufacturing industry and then shipped for reclamation to a facility in the ship and boat building industry, the exclusion would not apply, and the materials would be regulated as hazardous wastes.

Under proposed 40 CFR 261.2(g)(2), reclamation of excluded material could take place in multiple processing steps, provided that each processing step takes place in the same industry that generated the material. To illustrate, if a copper-bearing sludge required three separate reclamation steps in order to produce a marketable product such as copper sulfate, each of those reclamation steps would have to take place within the same industry in order to qualify for the exclusion.

Proposed 40 CFR 261.2(g)(2) would also allow reclamation of excluded material to take place at one or more different locations or facilities, as long as each reclamation step occurs within the generating industry. In fact, we anticipate that, in many situations, reclamation of materials will take place at a different facility from where the materials were generated, but would remain within in the same industry. In some cases, excluded materials might be reclaimed in several steps, each time at a different location or facility, but within the same industry. As proposed, therefore, the exclusion would not place