

this solvent reclamation activity is part of the paint manufacturing process, and thus merely one of several activities comprising an establishment best classified as paint manufacturing under NAICS, then the reclamation activity would be part of the paint manufacturing industry. Alternatively, if the solvent reclamation activity became a centralized solvent reclamation facility for paint manufacturers, then under the NAICS approach the reclamation could ultimately become so significant (e.g., due to the number of employees, or receipts from its activities, etc.) as to be a separate establishment. In that case, the reclamation activity would likely be classified in an industry other than paint manufacturing, and the used solvents would no longer be excluded because they are not being reclaimed in a continuous process within the same industry.

The key point here is that in one instance, the reclamation activity clearly supports paint manufacturing, and is one of several activities in an establishment called paint manufacturing. In the other instance, the reclamation activity has become significant enough to be a separate establishment, and is thus classified based on its own activity, which would be different from the activity of the establishment (paint manufacture) it serves in this example. Classifying establishments based on their own activity, rather than the activity of the establishment being served, is consistent with the way in which the NAICS is intended to operate in situations involving "auxiliary" establishments.<sup>10</sup>

While we believe the NAICS appears to offer a clear, consistent, and familiar way to classify establishments for purposes of today's rule, we acknowledge that there may be some situations where this system might not provide definitive, "bright line" answers. As discussed above, a reclamation process could expand to a point where such a "sideline" reclamation process would rightly be considered significant enough to be a separate establishment, and a different industry, for the purpose of this rule. The reclamation establishment likely would then be classified as a waste management industry.

As stated above, the 2002 NAICS Manual contains guidance to help identify whether a particular activity can be defined as a separate establishment, in situations where there are other activities occurring at the same location.<sup>11</sup> However, our concern is whether this guidance is sufficient for determining more precisely when "sideline" reclamation systems would become "significant" enough to be considered separate establishments. Today's proposal would help resolve such issues for certain types of on-site reclamation processes. First, under proposed 40 CFR 261.2(g)(2)(v), if there is still some question (after consulting the 2002 NAICS Manual) as to the correct classification of a particular reclamation unit, process, or activity, we are proposing that with respect to hazardous secondary materials generated and reclaimed on site (as defined in 40 CFR 260.10), the on-site reclamation unit, process, or activity be considered part of the generating industry with which it is associated. This proposed provision reflects the idea that the scale or "significance" of on-site reclamation processes should be less relevant for the purpose of this rule when only materials that are generated on-site are involved.

The issue of when an on-site reclamation process would be significant enough to be considered a separate establishment under NAICS is more complex when the process also reclaims hazardous secondary materials generated off-site. Facilities that decide to accept such secondary materials from off-site for reclamation need to know at what point such reclamation processes would be considered separate establishments. In the paint manufacturer example discussed above, a risk-averse facility manager might unnecessarily restrict his or her reclamation activity. We believe that it may be advisable in the final rule to provide some more specific means of determining when such sideline reclamation processes would be significant enough to be considered separate establishments and, therefore, separate (and different) industries.

In order to clarify when a sideline operation becomes a waste management operation, EPA could identify several relevant criteria for facilities and regulators to evaluate. One of the criteria could be how much secondary

material from off-site is being reclaimed in the process. For example, the regulation could specify that an on-site reclamation process should be a separate establishment if more than 50% of the material reclaimed originates from off-site. Some different percentage (e.g., 25% or 75%) could also be appropriate for this purpose. Another criterion could be based on how much of the facility's revenue (e.g., more than 50%) is generated from reclaiming material from off-site. Another criterion might be based on the number of off-site generators (e.g., more than five) that supply secondary material to the reclamation process. The Agency requests comment on the need for additional regulatory clarification to determine when such sideline reclamation processes would be significant enough to be considered separate establishments, particularly where reclamation processes take materials from off-site generators. We also request comment on the specific options outlined above for addressing this issue.

We point out that elsewhere in today's preamble, we discuss co-proposing two options as part of defining what is a "continuous process within the generating industry." (See Section III.A.4. above, where under one option we propose that hazardous secondary materials that are generated and reclaimed in a continuous process within the same industry would not be eligible for today's exclusion, if the reclamation takes place at a facility that also recycles regulated hazardous wastes generated in a different industry.) However, here in this section we are requesting comment on possible ways to more clearly define industry, or more specifically, establishment, particularly where there are materials being received and reclaimed from off-site sources. While these two aspects of today's proposal address similar issues (e.g., improving clarity, and identifying reclamation outside the scope of today's proposal), we emphasize that here we are asking for comment on possible criteria for further defining establishment, which would conceivably apply under either of the co-proposed options described in section III.A.4.

EPA also requests comment on using the existing 2002 NAICS Manual for implementing the definition of industry under today's rule, and specifically as it is incorporated into the industry categories and definitions in the newly proposed Appendix X. We anticipate that for most locations, in most cases, the NAICS classification system described in the 2002 NAICS Manual,

<sup>10</sup> Under the SIC, establishments that primarily provided services to manufacturing establishments were classified based on the establishment being served: NAICS changed this to emphasize that each establishment should be classified based upon what the establishment does. (See NAICS Clarification Memorandum No. 3 in docket to today's proposed rulemaking.)

<sup>11</sup> These are (1) No one industry description in the classification includes such combined activities; (2) separate reports can be prepared on the number of employees, their wages and salaries, sales or receipts, and expenses; and (3) employment and output are significant for both activities. NAICS Manual, 2002, pp. 21–22.