

existing exemptions and exclusions will be somewhat narrower in scope, and the exclusion for intra-industry recycling may instead apply to some materials previously subject to the existing provisions.

The following is a brief description of existing exclusions and variances that would likely apply to a smaller universe of materials if today's proposed Option #1 exclusion were promulgated, and for which we are proposing clarifying conforming changes:

A. Conforming change to 40 CFR 261.4(a)(9). This existing conditional exclusion is for "spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose," and "wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood." The conditions for this exclusion, which are prescribed in more detail in 40 CFR 261.4(a)(9)(iii)(A)–(E), are as follows:

- The excluded materials must be reused on-site for their original intended purpose;
- Prior to reuse, the excluded materials must be managed to prevent releases to land or groundwater;
- Units managing excluded materials must be readily determined to be preventing such releases;
- Drip pads used to manage excluded materials must comply with the standards for drip pads in Subpart W of 40 CFR Part 265; and
- A one-time notice must be submitted by the facility owner/operator to the appropriate regulatory agency.

Some of these wood preserving solutions would actually be eligible for today's proposed exclusion, and some would not. Thus, the existing exclusion would need to be maintained in order for some of these materials to continue to be managed outside the Subtitle C regulatory system. The reason these materials would not be eligible for today's proposed 40 CFR 261.2(g) exclusion is because the product of the recycling process (treated lumber) is often used in "a manner constituting disposal" (*i.e.*, the treated lumber is used in or on the land, such as for landscaping timbers, fenceposts, railroad ties, etc.). As explained in previous sections of this preamble, this is one of the specific types of recycling that the Agency believes should remain regulated, even if the recycling is conducted intra-industry.

It is possible, of course, that in some cases lumber treated with recycled spent wood preserving solutions would not be used in a manner constituting disposal. In these cases the new exclusion for intra-industry recycling

would apply. Thus, both exclusions are needed for this particular recycling practice. For the purpose of clarity, we are proposing today to add a new paragraph (F) to the current 40 CFR 261.4(a)(9) exclusion, which would read as follows: "If the products of this recycling practice are not used in a manner constituting disposal, the spent wood preserving solutions are subject to the exclusion in 40 CFR 261.2(g), rather than this paragraph, provided the wood preserving solutions are generated and reclaimed in a continuous process within the same industry."

B. Conforming change to 40 CFR 261.4(a)(17). EPA is proposing to revise the existing conditional exclusion at 40 CFR 261.4(a)(17) to conform with today's proposal. Currently, 40 CFR 261.4(a)(17) excludes from the definition of solid waste "spent materials * * * generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by beneficiation." Under today's proposal, spent materials from mineral processing that are subsequently reclaimed within the mineral processing industry would not be solid wastes for purposes of Subtitle C. We are therefore proposing to delete the reference to mineral processing in the existing exclusion, since it would no longer be needed for those materials. However, "beneficiation" is not included within the "mineral processing industry" and, therefore, the existing exclusion as it pertains specifically to beneficiation would still be necessary and would remain in effect.

C. Conforming change to 40 CFR 260.30(b), and the associated criteria in 260.31(b)). Current 40 CFR 260.30(b) allows variances to be granted on a case-by-case basis for materials that are "reclaimed and then reused within the original production process in which they were generated." This provision is sometimes known as the "closed loop reclamation" variance. The standards and criteria for granting such variances are specified in 40 CFR 260.31(b). This provision is not, however, limited to intra-industry recycling—there may be situations in which a generator of a secondary material could arrange for reclamation of the material by a reclaimer in a different industry (*e.g.*, the waste management industry). We therefore intend to maintain this existing variance to address such situations. We are proposing, however, to clarify its applicability by adding the following language: "If the materials are reclaimed as part of a continuous process within the generating industry,

they are subject to the exclusion in 40 CFR 261.2(g) rather than the standards and criteria listed in 40 CFR 260.31(b)."

D. 40 CFR 260.30(c), and the associated criteria in 40 CFR 260.31(c). Under this existing provision, a variance from being classified as a solid waste can be obtained on a case-by-case basis for materials that "have been reclaimed but must be reclaimed further before the materials are completely recovered." This is commonly referred to as the "partially reclaimed" variance. Since this type of recycling may occur within the same industry or between two or more different industries (similar to 40 CFR 260.30(b), discussed above), we are proposing to add the following language as a conforming change: "If the materials are reclaimed as part of a continuous process within the generating industry, they are subject to the exclusion in 40 CFR 261.2(g) rather than the standards and criteria listed in 40 CFR 261.31(c)."

E. Section 261.4(a)(7). This provision excludes from the definition of solid waste "spent sulfuric acid used to produce virgin sulfuric acid," unless it is accumulated speculatively. To address situations where this type of recycling occurs in a continuous process within the same industry, we are proposing to add the following language as a conforming change to 40 CFR 261.4(a)(7): "Spent sulfuric acid that is reclaimed to produce virgin sulfuric acid in a continuous process within the generating industry is subject to the exclusion in 40 CFR 261.2(g), rather than this paragraph." Similar language is proposed to be added as a conforming change to each of the following provisions (F through J, below) that would be partially affected by today's proposed rule:

F. Section 261.4(a)(10). This is a conditional exclusion for certain types of hazardous wastes that are recycled to coke ovens or to produce coal tar.

G. Section 261.4(a)(11). This conditional exclusion applies to non-wastewater splash condenser dross residue from treatment of K061 in high-temperature metals recovery (HTMR) units.

H. Section 261.4(a)(13). This exclusion is for certain scrap metal being recycled.

I. Section 261.4(a)(14). This provides a conditional exclusion for shredded circuit boards being recycled.

J. Section 261.4(a)(19). This is a conditional exclusion for "spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid."

The Agency solicits comment on these proposed conforming changes.