

3. Proposed Conforming Changes for Co-proposed Regulatory Option #2

As explained above, under co-proposed Option #1 some existing regulatory waivers and exclusions would be rendered moot, since all of the materials addressed by those provisions would also be covered under the proposed 40 CFR 261.2(g) exclusion. However, this would not be the case under Option #2, since a recycler of these currently unregulated materials would be ineligible for today's proposed exclusion if the recycling facility also managed regulated hazardous wastes generated from a different industry. To illustrate, a recycler handling pulping liquors that are currently excluded from regulation under 40 CFR 261.4(a)(6) would not be able to use the 40 CFR 261.2(g) exclusion if he/she also were recycling hazardous wastes from a different industry. Thus, under this option we would need to maintain the existing 40 CFR 261.4(a)(6) exclusion in order to avoid changing the coverage of the existing exclusion.

If the Agency chooses to adopt Option #2 in the final rule, we are proposing that the four existing provisions which would be rendered moot and deleted under Option #1 (these are discussed above in section III.A.7.a of this preamble) would be retained, but would be amended so that they would remain effective for recyclers that would not be eligible for the 40 CFR 261.2(g) exclusion. For example, the current 40 CFR 261.4(a)(6) exclusion for pulping liquors would be retained, but would be amended to add the following sentence: "Pulping liquors that are reclaimed as part of a continuous process within the generating industry are subject to the exclusion in 40 CFR 261.2(g) rather than this paragraph." The other three provisions that would otherwise be eliminated completely under Option #1 would be amended similarly if Option #2 were promulgated in the final rule.

In the above discussion of conforming changes for co-proposed Option #1, we identify a number of existing provisions that would be only partially affected by today's proposed exclusion, and we are proposing to add text to each provision specifying that if the materials are reclaimed as part of a continuous process within the generating industry they would be subject to the exclusion in 40 CFR 261.2(g), rather than the existing provision. Under Option #2, these provisions would also be only partially affected. We are thus proposing to make the same conforming changes to those provisions in the final rule if we choose to adopt Option #2 to define

"continuous process within the generating industry."

EPA invites comment on the proposed conforming changes described above, for both regulatory options.

4. Used Oil Regulations—40 CFR Part 279

This part contains management standards for used oil, including used oil that is recycled. Used oil is a solid waste under RCRA. Because EPA promulgated these provisions pursuant to a specific Congressional mandate governing used oil (*i.e.*, section 3014 of RCRA, as amended by the Used Oil Recycling Act of 1980), they will not be affected by today's proposed 40 CFR 261.2(g).

10. How Would the Proposal Be Implemented and Enforced?

Implementation. Since the exclusion from the definition of solid waste in today's proposal is de-regulatory in nature, implementing the rule as proposed may have important consequences at certain facilities where recycling activities are currently regulated under RCRA, but would no longer be regulated if this rule were promulgated and became effective.

One key issue has to do with the effects of the rule on facilities that currently have RCRA permits or interim status, and are managing hazardous wastes that would become excluded under this rule. Under one scenario, a facility that manages a variety of hazardous waste materials, including some that become excluded under this rule, would be affected only to the extent that certain units or processes at the facility would no longer be subject to hazardous waste regulations. A somewhat different scenario could involve a facility whose hazardous wastes would all become excluded from regulation when this rule takes effect (*i.e.*, the facility is no longer a hazardous waste management facility).

For permitted facilities that would be managing hazardous secondary materials excluded under this rule in addition to regulated hazardous wastes, some changes to the facility's permit would likely need to be made, though they may be relatively minor. These facilities would need to maintain their permits, but the units used solely to manage excluded materials would no longer need to be subject to permit conditions. In such cases, the facility owner/operator could seek a permit modification from EPA or the authorized state agency to remove the formerly subject unit(s) from the permit.

A permitted facility that would no longer be considered a hazardous waste

management facility under the exclusion (*e.g.*, a facility managing only hazardous secondary materials that become excluded under today's proposal) would no longer need a hazardous waste operating permit. Owner/operators of such facilities could therefore apply to the overseeing agency to have the facility's permit terminated. However, where such a facility has not yet completed facility-wide corrective action (*see* 40 CFR 264.101), the obligation to conduct such cleanup would remain in effect. Therefore, in such cases, the permit would not be terminated, but could be modified to remove the requirements that applied to the now-excluded material, and maintain the corrective action provisions of the permit. In such a case, the facility would thereafter have a A corrective action-only@ permit that would expire only when facility-wide corrective action is determined to be complete. It should be noted that for facilities in these situations, EPA or an authorized state might also choose to address a facility's cleanup obligations under an alternative Federal or State enforcement mechanism that may be available, rather than continuing to pursue corrective action under a permit.

A facility that is operating under RCRA interim status would be affected by promulgation of today's proposed rule in much the same way as permitted facilities, and the issue of corrective action would be addressed in a similar manner. For an interim status facility managing only materials that become excluded under today's proposal, the part 265 interim status standards that applied to the hazardous waste management units at the facility, as well as the general facility standards in part 265, would be moot and no longer in effect. Under RCRA regulations, however, cessation of hazardous waste operations alone does not eliminate a facility's interim status. *See* 40 CFR 270.73. A facility that wishes to no longer be in interim status could seek a denial of its pending permit application. Since the Agency believes it appropriate to ensure that corrective action is addressed prior to denying a permit under these circumstances, we would expect to grant the denial only when we concluded that the facility's corrective action obligations have been satisfied.

In addition to the above described issues relating to permits and corrective action, today's proposed rule may also have implications with regard to closure of hazardous waste storage units at affected facilities. In cases where hazardous waste storage units would only be managing excluded material pursuant to today's proposal, the