

(ii) If such reclamation produces any materials that are sent to a different industry for further reclamation, those materials will not be eligible for the exclusion in paragraph (g)(1). This would not, however, affect the exclusion for other materials that are generated and reclaimed within the same industry.

(iii) The guidelines and industry classifications specified in Appendix X of this Part must be used to identify the appropriate industry classification of each establishment that generates or reclaims materials excluded under this paragraph (g). An "establishment" for the purpose of this paragraph is an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed. An establishment is the smallest such unit for which records provide information on the cost of resources, materials, labor and capital employed to produce the units of output.

(iv) Facilities comprised solely of establishments engaged in waste management services are in industries not eligible for this exclusion. This includes facilities with establishments classified under NAICS Codes 5621, 5622, or 5629, and any other facility that reclaims secondary materials received from off-site generators, and that does not produce any products made from non-secondary materials. Hazardous secondary materials sent to these facilities are not considered to be generated and reclaimed in a continuous process within the same industry.

(v) If, using the guidelines in Appendix X of this Part, it is not clear whether a reclamation unit, process, or activity is part of the same industry in which the material was generated, then the generation and reclamation of these materials will be presumed to occur within the same industry, provided that the reclamation unit, process, or activity is located on-site (as defined in § 260.10) with respect to the process that generated the material.

(vi) The exclusion provided under this paragraph for materials that are generated and reclaimed in a continuous process within the same industry does not apply if the reclamation facility also recycles hazardous waste from a different industry.

(3) For the purpose of this paragraph, materials are generated and reclaimed in a continuous process if:

(i) The materials are not handled by any entity or facility outside of the generating industry, except for a transporter; and

(ii) The materials are not speculatively accumulated, as defined in § 261.1(c)(8).

(4) Generators of secondary materials that have previously been subject to regulation as hazardous wastes, but which will be excluded from regulation under this paragraph, must send a one-time notification to the Regional Administrator. The notification must identify the name, address, and EPA ID number (if applicable) of the generator facility; the name and phone number of a contact person; the type of material that will be excluded; and the industry that generated the material, as classified according to Appendix X of this Part.

(h) *Legitimate Recycling.* Materials that are not legitimately recycled are discarded and are solid wastes. Persons who recycle hazardous wastes, as well as persons claiming to be excluded from hazardous waste regulation under § 261.2 or § 261.4(a) because they are engaged in recycling, must be able to demonstrate that the recycling is legitimate. Moreover, hazardous wastes must be legitimately recycled to qualify for special management standards under 40 CFR 261.6 and 40 CFR Part 266. Determinations as to the legitimacy of specific recycling activities must be made by considering whether:

(1) The secondary material to be recycled is managed as a valuable commodity. Where there is an analogous raw material, the secondary material should be managed in a manner consistent with the management of the raw material. Where there is no analogous raw material, the secondary material should be managed to minimize the potential for releases to the environment.

(2) The secondary material provides a useful contribution to the recycling process or to a product of the recycling process and evaluating this criterion should include consideration of the economics of the recycling transaction. The recycling process itself may involve reclamation, or direct reuse without reclamation.

(3) The recycling process yields a valuable product or intermediate that is:

(i) Sold to a third party; or

(ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient in an industrial process.

(4) The product of the recycling process:

(i) Does not contain significant amounts of hazardous constituents that are not found in analogous products; and

(ii) Does not contain significantly elevated levels of any hazardous

constituents that are found in analogous products; and

(iii) Does not exhibit a hazardous characteristic that analogous products do not exhibit.

6. Section 261.4 is amended by removing and reserving paragraphs (a)(6) and (a)(8), and by revising paragraphs (a)(7), (a)(10), (a)(11), (a)(13), (a)(14), (a)(17) introductory text and (a)(19) and by adding paragraph (a)(9)(iii)(F) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(6) [Reserved]

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in § 261.1(c). 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 § 261.2(g), rather than this paragraph.

(8) [Reserved]

(9) * * *

(iii) * * *

(F) 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 § 261.2(g), rather than this paragraph, provided the wood preserving solutions are generated and reclaimed in a continuous process within the same industry.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-product processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in § 261.24 when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the coal tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar. If the wastes described above in this paragraph are reclaimed and recycled in a continuous process within the generating industry and are not burned for energy recovery, they are subject to the exclusion in § 261.2(g), rather than this paragraph.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery. If the residue is reclaimed as part of a continuous process within the generating industry,