

solvents or containing listed solvents when the industrial wipes are laundered or cleaned for reuse under the conditions set out below. Liquids removed from such wipes are subject to hazardous waste regulation if they contain listed solvents or if they exhibit hazardous waste characteristics.

The proposed conditional exclusion from the definition of solid waste will not apply to wipes that are taken out of service to be disposed of. When the wipes are disposed of, they cease being "reusable" industrial wipes and become "disposable" industrial wipes and must be handled accordingly. The proposed exclusion also does not apply to reusable wipes containing solvents or other materials that are not hazardous wastes. These wipes are not subject to subtitle C regulation.

EPA also proposed a rule that would eliminate regulation of a range of materials which are reused in a continuous process within the same generating industry (68 FR 61558, October 28, 2003). The proposed rule would establish, if finalized, that such materials are not solid wastes under the rulings in *American Mining Congress v. EPA*, 824 F.2d 1177 (1987) ("AMC I") and *Association of Battery Recyclers v. EPA*, 208 F.3d 1047 (2000), ("ABR"). While today's proposal is more narrowly targeted in terms of waste streams, and involves cross-industry transfers, EPA will take appropriate action to ensure that the provisions in this rule are consistent with those of that broader rule, when finalized.

a. Basis for Proposed Exclusion From the Definition of Solid Waste

EPA's basis for the exclusion from the definition of solid waste proposed today is that industrial wipes being cleaned and returned into service are more commodity-like than waste-like and, therefore, that they can be conditionally excluded from the regulatory definition of solid waste. In 40 CFR 260.31(c), EPA states that a material's commodity-like properties can be a basis for a variance from being a solid waste, among other things, because of how they resemble a product rather than a waste and how they are managed. The finding that solvent-contaminated reusable industrial wipes are commodity-like is based on three factors and, importantly, on the fact that in this case all three factors apply to industrial wipes. EPA may not reach a similar conclusion for a material that meets just one or two of these factors.

The first of the "commodity-like" factors is that the industrial wipes are often partially reclaimed, that is, spun in a centrifuge, wrung out, or allowed to

drain so that some of the unwanted solvent has been removed before shipment, helping to restore the wipes to a usable condition. We are proposing a "no free liquid" condition for transportation off site to ensure that wipes that are going to reclamation have low levels of solvent consistent with this factor.

The second of the factors is that industrial wipes are handled throughout the laundering or reuse process as valuable commodities because the laundry benefits from their use and reuse. When wipes return to a laundry from a user to be laundered, they are counted before the washing process. This process keeps users financially accountable for the number of wipes they have in their possession and demonstrates that the wipes are not waste-like, as they have value to the laundries and to the users. Consequently, it is more likely that the used industrial wipes will be handled carefully, in appropriate containers, and will be treated as commodities, rather than as wastes, by both users and laundries.

The final consideration is that the solvent-contaminated industrial wipes are owned by the same entity throughout the process. Laundries own the wipes and lease them to the users and, therefore, have an incentive to ensure that the wipes are reused, not discarded. This factor encourages much of the same behavior as the second factor does, leading to responsible management of the materials.

C. Solvent Removed From Industrial Wipes

When industrial wipes are returned to laundries, the solvents are removed through laundering so that the wipes can be reused. In some cases, the solvents are collected and recycled for further use, but, in other cases, the solvent is discarded as a hazardous waste or discharged to a Publicly Owned Treatment Works (POTW). Some stakeholders have argued that industrial wipes should not be considered eligible for an exclusion from the definition of solid waste for being commodity-like, because the solvent is the hazardous constituent, not the industrial wipe, and the solvent is often discarded rather than reused. However, spent material reclamation scenarios frequently involve the removal of unwanted contaminants from the material being reclaimed. In this case, as stated above, EPA perceives the reusable solvent-contaminated industrial wipes to be a commodity-like material. Even though it contains solvent, the material is predominantly a product that needs

servicing (*i.e.*, solvent removal) before it can be used. Therefore, no discard occurs until after the contamination is removed from the wipe.

In addition, EPA has previously concluded that contaminated material can be excluded from the definition of solid waste even though contamination ends up in the wastestreams of the reclamation process. *See*, for example, the proposed exclusion for glass from cathode ray tubes (67 FR 40509) and the finalized conditional exclusion for waste-derived zinc fertilizers (67 FR 48393). Nevertheless, the Agency solicits comment on this issue, and specifically on whether reusable industrial wipes should be conditionally excluded from the definition of hazardous waste, as opposed to being conditionally excluded from the definition of solid waste.

V. Detailed Discussion of Proposed Rule

EPA is today proposing a conditional exclusion from the definition of hazardous waste for solvent-contaminated disposable industrial wipes and a conditional exclusion from the definition of solid waste for solvent-contaminated reusable industrial wipes.

This section discusses in detail the major features of and rationale for the proposal. The Agency also presents options we are considering in developing the proposed rule. We welcome any comments on all aspects of this proposed rule and on other options we considered in developing this proposal. More discussion of the options is also available in the Proposed Rule's Technical Background Document, available in the Rulemaking Docket. Throughout this description of the proposed rulemaking, EPA specifically requests comments on certain options, but comments are welcome on all elements of the proposal.

A. Scope of Solvents Covered by the Proposed Rule

EPA is proposing that both the exclusions in this proposal be applicable both to industrial wipes that exhibit a hazardous characteristic (*see* 40 CFR 261.21–261.14) due to use with solvents and to industrial wipes containing any listed hazardous waste solvents: F001–F005 listed spent solvents (*see* 40 CFR 261.31) and corresponding P- or U-listed commercial chemical products when spilled (*see* 40 CFR 261.33).

We also note that this proposed rule would not be applicable to generators using non-hazardous solvents, since these industrial wipes are not currently