

far as we knew, the oil-bearing hazardous secondary materials were generally comprised of tar-like, oily substances not amenable to land storage or placement.

Most of the commenters agreed with our position that some type of restriction was appropriate to prevent the oil-bearing hazardous secondary materials from being placed or stored on the land. However, some commenters did not completely agree with our characterization of these materials (i.e., tar-like oily substances) and suggested that the prohibition take into account the physical characteristics of the oil-bearing hazardous secondary materials before a total prohibition on land placement was implemented. For example, some commenters believed that the prohibition should only apply to those hazardous secondary materials that are tar-like oily substances, while other commenters suggested that we modify the wording of the prohibition to allow for land placement of hazardous secondary materials if it would not endanger the environment. One commenter stated that the hazardous secondary materials they received from a petroleum refinery could be described as chunky, angular, blocky or coarse particulates and could be safely managed on the land. However, these commenters did not provide EPA with any characterization data that would support their claims.

Given that these hazardous secondary materials would be hazardous waste if discarded instead of being gasified, and given that land placement of these types of oil-bearing hazardous secondary materials is not typical before they are reinserted back into the petroleum refinery, we see no reason to relieve them from the existing prohibition against land placement for all oil-bearing hazardous secondary materials prior to re-insertion into the petroleum refining process (i.e., gasified). This approach maintains full regulatory consistency with the exclusion found at 40 CFR 261.4(a)(12)(i) which is being amended today to include gasification as an identified petroleum refining process.

D. Does the Conditional Exclusion Prohibit Oil-Bearing Hazardous Secondary Materials From Being Speculatively Accumulated Prior to Insertion in the Gasification System?

Yes. In today's rule, the conditional exclusion we are amending (40 CFR 261.4(a)(12)(i)) includes the requirement that the oil-bearing hazardous secondary materials not be speculatively accumulated prior to insertion into the petroleum refining process. This

provision will not change with the addition of gasification as a listed petroleum refining process.

In the proposed rule, we stated that the speculative accumulation provision ensures that legitimate quantities of oil-bearing hazardous secondary materials are being recycled and re-inserted into the petroleum refining process rather than being stored to avoid regulation. We reasoned that this condition was necessary to assure that recycling actually occurs, and that such materials are not discarded by being stored for extended periods of time. Furthermore, we stated that this condition is consistent with the no speculative accumulation condition we adopted for excluded oil-bearing hazardous secondary materials returned to the petroleum refinery process (40 CFR 261.4(a)(12)(i)).

As such, we are promulgating, as proposed, the speculative accumulation provision for oil-bearing hazardous secondary materials prior to their insertion into the petroleum refinery process. This requirement should ensure that such materials are not "over accumulated," an indication of discard, but are being legitimately recycled, which maintains regulatory consistency with the existing exclusion we are amending at 40 CFR 261.4(a)(12)(i).

E. Does the Conditional Exclusion Regulate Certain Metals in Residuals Generated from the Gasification Process?

No. In today's final rule, we are removing the proposed condition that materials (both co-products and residuals) generated by the gasification system not exceed the nonwastewater Universal Treatment Standards (UTS) (40 CFR 268.48) for antimony, arsenic, chromium, lead, nickel, and vanadium when placed on the land.²⁵ Under today's rule, and consistent with both the proposal and the existing exclusion found at 40 CR 261.4(a)(12)(i), we are classifying residues generated after the gasification process as newly generated. The determination as to whether the gasification residues (i.e., waste) or any other residue generated after reinsertion into the petroleum refining process are hazardous will be based on whether the residues exhibit a hazardous waste characteristic(s) when generated (i.e., after the oil-bearing hazardous secondary material is gasified). Should a residue exhibit a characteristic, such as leaching toxic metals at levels above

the prescribed standards, it will be required to be managed in compliance with all applicable RCRA hazardous waste regulations, including the Land Disposal Restrictions (see 40 CFR 268.48).²⁶ As for co-products, they are fully excluded as products and are outside RCRA jurisdiction unless discarded and/or disposed.

In our proposed rule, we requested comment on a condition to the exclusion establishing leachate limits for six toxic metals in the gasification co-products and residuals prior to any placement on the land. We considered this condition to ensure that co-products and residues generated by the gasification process and that were to be placed on the land did not contain toxic metals with a potential for leaching greater than allowed by the requirements of the Land Disposal Restrictions (LDR) program. (See 67 FR at 13691, March 25, 2002.) In developing this possible condition, we were influenced by the condition established for hazardous waste-derived products that are used in a manner constituting disposal (see 40 CFR 266.20). These materials are required to meet the appropriate LDR treatment standards prior to use as products applied to the land (e.g., fertilizers). We reasoned that requiring this same condition for co-products and residuals would ensure legitimate fuel manufacturing by applying the same land disposal provisions to the co-products and residuals that would have existed had the material (i.e., the listed waste) not been excluded from the definition of solid waste. Further, it was reasoned that this proposed condition would be needed to assure that the gasification system is operated for the purpose claimed—conversion of organic matter in the hazardous secondary materials into fuels (or intermediates), while removing metals from raw synthesis gas and trapping those metals in an inert matrix. The levels in the proposed condition would provide a means of quantifying this premise.

We received comments that both supported and opposed this condition. Commenters opposed to the condition stated that there was no need to impose the UTS requirements, beyond what the regulations (e.g., 40 CFR 261.4(a)(12)(i)) already required for residues generated from the petroleum refining process (i.e., the characteristic test), and that EPA had provided no rationale for imposing the additional UTS

²⁵ Universal Treatment Standards (UTS) are concentration-based treatment levels that must be met before a RCRA hazardous waste can be land disposed. These treatment standards can be found in 40 CFR 268.40.

²⁶ If the Agency receives evidence to suggest that these gasification residues routinely have the potential to adversely affect human health and the environment, the Agency could list them as hazardous under RCRA.