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## RCRA/Superfund/OUST Hotline Monthly Report Question

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### 2. Closed-Loop Recycling Exclusion

Under the closed-loop recycling exclusion in 40 CFR §261.4(a)(8), secondary materials that are reclaimed and returned to the original process or processes in which they were generated are excluded from Subtitle C of RCRA, provided they are reused in the production process and the criteria in 40 CFR §261.4(a)(8) are met. Would secondary materials managed in a system that includes storage in open-top tanks fall within the exclusion in §261.4(a)(8)?

Secondary materials managed in a system that includes storage in open-top tanks may qualify for the closed-loop recycling exclusion as long as the system meets the four requirements in §261.4(a)(8). EPA views closed-loop recycling operations as an integral part of production processes, not as distinct waste management operations (51 FR 25443; July 14, 1986). Typically, owners or operators of such closed-loop recycling operations handle the secondary materials as commodities; i.e., in a manner designed to avoid loss or release. Although EPA does not preclude owners or operators from storing secondary materials in open-top tanks under the closed-loop recycling exclusion, there are other factors that prevent most materials, especially volatiles, from being stored in them. These factors include possible contamination from rain or dust and the threat of explosive conditions. Owners or operators of open-top tanks should therefore ensure secondary materials are managed as valuable materials prior to reclamation in order for the tank to be considered a part of a closed-loop recycling system and excluded under §261.4(a)(8). Determinations regarding the closed-loop recycling exclusion are usually case-specific. Thus, if EPA discovers a situation where highly volatile materials are stored in an open-top tank and large volumes of the materials are lost prior to reclamation, the exclusion may not apply because the secondary materials are not being managed to prevent loss or release prior to reclamation, causing the material to become regulated as a waste under Subtitle C of RCRA (51 FR 25443; July 14, 1986).