

less than 1,000 metric tons and you wish to demonstrate that your wastes do not exceed the K181 listing levels, you can use your knowledge of your wastes to calculate your wastes' mass loadings. Following the initial determination that your wastes are nonhazardous under this listing, you would have a continuing obligation to make such a determination at least on an annual basis. After three consecutive annual demonstrations that your wastes are not subject to K181, you would be able to make subsequent determinations based on your knowledge of the wastes, rather than by conducting waste analysis.

We are proposing not to list wastewaters from the production of dyes and/or pigments.

Section II provides background on the Listing Program, past proposed listing determinations for these wastes, relevant litigation, the scope of this effort, an overview of this industry and the general types of data that we used. Section III describes our approach to conducting this listing determination. Section IV presents our basis for concluding that nonwastewaters should be listed as K181 and that wastewaters do not warrant listing. Section V describes the proposed process for demonstrating that your wastes are not K181.

B. What Are the Statutory Authorities for This Proposed Rule?

Except as specified below, these regulations are being proposed under the authority of sections 2002(a), 3001(b), 3001(e)(2), 3004(d)–(m), and 3007(a) of the Solid Waste Disposal Act, 42 U.S.C. 6912(a), 6921(b) and (e)(2), 6924(d)–(m), and 6927(a), as amended, most importantly by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These statutes commonly are referred to as the Resource Conservation and Recovery Act (RCRA), and are codified at Volume 42 of the United States Code (U.S.C.), sections 6901 to 6992(k) (42 U.S.C. 6901–6992(k)).

Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a) is the authority under which EPA is proposing amendments to 40 CFR part 302.

II. Background

A. How Does EPA Define a Hazardous Waste?

EPA's regulations establish two ways of identifying solid wastes as hazardous under RCRA. A waste may be considered hazardous if it exhibits certain hazardous properties

(“characteristics”) or if it is included on a specific list of wastes EPA has determined are hazardous (“listing” a waste as hazardous) because we found them to pose substantial present or potential hazards to human health or the environment. EPA's regulations in the Code of Federal Regulations (40 CFR) define four hazardous waste characteristic properties: ignitability, corrosivity, reactivity, or toxicity (*see* 40 CFR 261.21–261.24). As a generator, you must determine whether or not a waste exhibits any of these characteristics by testing the waste, or by using your knowledge of the process that produced the waste (*see* § 262.11(c)). While you are not required to sample your waste, you will be subject to enforcement actions if you are found to be improperly managing materials that are characteristic hazardous waste.

EPA may also conduct a more specific assessment of a waste or category of wastes and “list” them if they meet criteria set out in 40 CFR 261.11. As described in § 261.11, we may list a waste as hazardous if it:

- Exhibits any of the characteristics noted above, *i.e.*, ignitability, corrosivity, reactivity, or toxicity (§ 261.11(a)(1));
- Is “acutely” hazardous, *i.e.*, if it is fatal to humans at low doses, or in the absence of human data, it has been shown in animal studies to meet certain criteria, or otherwise capable of causing or significantly contributing to an increase in serious illness (§ 261.11(a)(2)); or
- Is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed (§ 261.11(a)(3)).

Under the third criterion, at 40 CFR 261.11(a)(3), we may decide to list a waste as hazardous if it contains hazardous constituents identified in 40 CFR part 261, appendix VIII, and if, after considering the factors noted in this section of the regulations, we “conclude that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.” We place a chemical on the list of hazardous constituents on Appendix VIII only if scientific studies have shown a chemical has toxic effects on humans or other life forms. When listing a waste, we also add the hazardous constituents that serve as the basis for listing the waste to 40 CFR part 261, appendix VII.

The regulations at 40 CFR 261.31 through 261.33 contain the various hazardous wastes the Agency has listed

to date. Section 261.31 lists wastes generated from non-specific sources, known as “F-wastes,” and contains wastes that are usually generated by various industries or types of facilities, such as “wastewater treatment sludges from electroplating operations” (*see* code F006). Section 261.32 lists hazardous wastes generated from specific industry sources, known as “K-wastes,” such as “Spent potliners from primary aluminum production” (*see* code K088). Section 261.33 contains lists of commercial chemical products and other materials, known as “P-wastes” or “U-wastes,” that become hazardous wastes when they are discarded or intended to be discarded.

Today's proposed regulations would list certain dyes and/or pigments production wastes as a K-waste code under § 261.32. We are also proposing to add constituents that serve as the basis for the proposed listings to appendix VII of part 261, as well as to add certain constituents to appendix VIII of part 261 that are not already included.

“Derived-From” and “Mixture” Rules

Residuals from the treatment, storage, or disposal of most listed hazardous wastes are also classified as hazardous wastes based on the “derived-from” rule (40 CFR 261.3(c)(2)(i)). For example, ash or other residuals generated from the treatment of a listed waste generally carries the original hazardous waste code and is subject to the hazardous waste regulations. Also, the “mixture” rule (40 CFR 261.3(a)(2)(iii) and (iv)) provides that, with certain limited exceptions, any mixture of a listed hazardous waste and a solid waste is itself a RCRA hazardous waste.

B. How Does EPA Regulate RCRA Hazardous Wastes?

If a waste exhibits a hazardous characteristic or is listed as a hazardous waste then it is subject to federal requirements under RCRA. These regulations affect persons who generate, transport, treat, store or dispose of such waste. Facilities that must meet hazardous waste management requirements, including the need to obtain permits to operate, commonly are referred to as “Subtitle C” facilities. Subtitle C is Congress' original statutory designation for that part of RCRA that directs EPA to issue regulations for hazardous wastes as may be necessary to protect human health or the environment. EPA standards and procedural regulations implementing Subtitle C are found generally at 40 CFR parts 260 through 273.

All RCRA hazardous wastes are also hazardous substances under the