

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as defined in section 101(14)(C) of the CERCLA statute. This applies to wastes listed in §§ 261.31 through 261.33, as well as any wastes that exhibit a RCRA characteristic. Table 302.4 at 40 CFR 302.4 lists CERCLA hazardous substances along with their reportable quantities (RQs). Anyone spilling or releasing a substance at or above the RQ must report the release to the National Response Center, as required in CERCLA section 103. In addition, section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) requires facilities to report the release of a CERCLA hazardous substance at or above its RQ to State and local authorities. Today's rule proposes to establish RQs for the newly listed wastes.

C. How Does EPA Regulate Solid Wastes That Are Not RCRA Hazardous Wastes?

If your waste is a solid waste, but is not, or is determined not to be a listed and/or characteristic hazardous waste, then you may manage them at Subtitle D facilities. These facilities are approved by state and local governments and generally impose less stringent requirements on management of wastes. Subtitle D is the statutory designation for that part of RCRA that deals with disposal of nonhazardous solid waste. EPA regulations affecting Subtitle D facilities are found at 40 CFR parts 240 thru 247, and 255 thru 258. Regulations for Subtitle D landfills that accept municipal waste ("municipal solid waste landfills") are in 40 CFR part 258.

D. Overview of the Hazardous Waste Listing Determination Process for Dyes and/or Pigments Production Wastes

1. Previous Proposals

Under the Resource Conservation and Recovery Act (RCRA) of 1976, as an amendment to the Solid Waste Disposal Act of 1965, Congress directed EPA to establish a framework for RCRA's Subtitle C hazardous waste program. Congress also required EPA to propose and write timely rules identifying wastes as hazardous under Subtitle C.

In the early 1980's, the EPA's Office of Solid Waste began an investigation of the wastes generated by the dyes and/or pigments production industries. Then in 1984, Congress passed the Hazardous and Solid Waste Amendments (HSWA) to RCRA to significantly expand the scope of RCRA, requiring EPA, in part, to make listing determinations for a number of wastes including those from the manufacture of dyes and pigments

(RCRA section 3001(e)(2)). The Agency has made two listing determination proposals with regard to organic dyes and pigments manufacture, one in 1994 and another in 1999, according to the deadlines set forth in a consent decree entered between EPA and Environmental Defense (ED; formerly Environmental Defense Fund, or EDF). The consent decree is described further in II.C.2.

On December 22, 1994, the Agency proposed its first listing determinations for wastes from the production of organic dyes and pigments (59 FR 66071). Specifically, the Agency proposed to list five wastes, not to list six other wastes, and to defer action on an additional three wastes. On July 23, 1999, the Agency proposed concentration-based listings for two of the three deferred wastes from the 1994 proposed rule (64 FR 40192). EPA redacted underlying data from both proposals due to a court injunction that placed restrictions on the Agency's release of underlying data with unresolved confidentiality claims. (The court injunction is discussed further in II.C.3.) EPA has not taken final action on either of these proposals.

Today's proposed rule completely supercedes the '94 and '99 proposals. We have transferred over to the new docket those non-CBI materials that we are using as a basis for the new proposal.

2. Consent Decree Schedule for This Proposal

As noted above, HSWA established deadlines for completion of a number of listing determinations, including for dyes and pigments production wastes (see RCRA section 3001(e)(2)). Due to competing demands for Agency resources and shifting priorities, these deadlines were not met. As a result, in 1989, ED filed a lawsuit to enforce the statutory deadlines for listing decisions in RCRA section 3001(e)(2). (*Environmental Defense v. Whitman*, D.D.C. Civ. No. 89-0598.) To resolve most of the issues in the case, in 1991 ED and EPA entered into a consent decree which has been amended several times to revise the deadlines for EPA action. Paragraph 1.h.(i) (as amended in December 2002) of the consent decree addresses the organic dyes and pigments production industries:

EPA shall promulgate final listing determinations for azo/benzidine, anthraquinone, and triarylmethane dye and pigment production wastes on or before February 16, 2005 * * * These listing determinations shall be proposed for public comment on or before November 10, 2003.

Furthermore, paragraph 6.e. (as amended) stipulates that:

On or before November 10, 2003, EPA's Administrator shall sign a notice of proposed rulemaking proposing land disposal restrictions for dye and pigment wastes proposed for listing under paragraph 1.h.(i). EPA shall promulgate a final rule establishing land disposal restrictions for dye and pigment wastes listed under paragraph 1.h.(i) on the same date that it promulgates a final listing determination for such wastes.

Today's proposal satisfies EPA's duty under paragraphs 1.h and 6.e of the ED consent decree to propose listing determinations and land disposal restrictions for the specified organic dyes and/or pigments production wastes.

3. Effect on Proposals of Legal Actions Pertaining to Confidential Business Information

In late 1994, just prior to EPA's issuance of the first listing proposal for dyes and/or pigments production wastes, EPA was sued by a number of pigment manufacturers who successfully sought an injunction prohibiting EPA from releasing the companies' information that they had submitted to EPA and claimed as Confidential Business Information (CBI). (*Magruder Color Co. v. EPA*, Civ. No. 94-5768 (D.N.J.)) The U.S. District Court in New Jersey enjoined EPA from disclosing any of the claimed CBI at issue in the litigation. As a result, EPA redacted underlying data from both its 1994 and 1999 proposed dye and pigment listing determinations. Members of the public (including ED) informed EPA that they could not adequately comment on the proposals without access to the redacted data.

EPA had intended to litigate the *Magruder* case and publish a notice of data availability releasing any information that the Court determined not to be CBI. However, litigation proved extremely time-consuming. Consequently, in 2002 EPA decided to try a new strategy—issuing a completely new proposal that did not rely on data subject to the injunction in *Magruder*. EPA also reached a settlement with *Magruder* plaintiffs that stayed the litigation during this new rulemaking and permitted EPA to disclose certain specified masked and aggregated waste sampling data. The Stipulation and Consent Order entered by the District Court on June 30, 2003 is available in the docket for today's proposal.

Today's proposal has been developed independently of the first and second proposals. It does use some data developed for the 1994 proposal. First, it uses RCRA § 3007 questionnaire