

responses submitted by dyes and/or pigments manufacturers that were not plaintiffs in *Magruder* and that we have determined are not CBI. We also use the masked and aggregated data from EPA's record sampling and analysis of dye and pigment wastes disclosed pursuant to the settlement described above. Finally, we use some data submitted in public comments that are not claimed as CBI. We are not using, however, any of the analyses or background documents prepared for the two previous proposals. We have conducted new analyses, prepared new background documents, and reached new conclusions. Today's proposal completely supersedes the 1994 and 1999 proposals. EPA does not intend to respond to comments submitted on those proposals. Thus, if you believe that any comments submitted on those proposals remains germane to today's proposal, you should submit them (or relevant portions) again during this comment period.

E. Existing Regulations That Apply to This Industry

RCRA authorizes EPA to evaluate industry waste management practices and, if necessary, regulate how wastes are handled to ensure that present or potential hazards are not posed to human health and the environment. In addition to RCRA, the Clean Water Act (CWA) and Clean Air Act (CAA) provide EPA with the statutory authority to evaluate industry practices and, if necessary, regulate industry releases of pollutants to environmental media such as water and air.

Currently, there are no hazardous waste listings under RCRA specifically directed at organic dyes and/or pigments production wastes. Organic dyes and/or pigments production waste streams may, however, carry hazardous waste listing and/or characteristic codes if they are generated from the use of certain common organic solvents (spent solvent wastes F001 through F005) or if they exhibit a hazardous waste characteristic (ignitability-D001, corrosivity-D002, reactivity-D003, toxicity-D004-D043). In addition, a variety of intermediates used in dyes and pigments production are listed hazardous waste when disposed as discarded commercial chemical products under § 261.33. EPA is not soliciting comment on these existing hazardous waste listings and does not intend to respond to such comments if received. As explained in section IV.B.3, EPA is proposing to exclude from today's proposed listing dyes and/or pigments production wastes that are subject to these existing listings or hazardous waste characteristics.

Regulatory requirements under the CWA (40 CFR part 414) specify effluent guidelines for wastewaters discharged from the organic chemical industry, including certain dyes and/or pigments production wastes that are discharged to navigable waters. These guidelines are implemented through national pollutant discharge elimination system (NPDES) permits. These regulations apply to dyes and/or pigments production wastes that originate from the manufacture of cyclic crudes and intermediates, dyes, and organic pigments classified under SIC 2865 (among various organic chemicals, plastics, and synthetic fibers (OCPSF) products). In addition, manufacturers who discharge wastewaters generated from dyes and/or pigments production to a publicly owned treatment works (POTW) may be required to comply with general pretreatment requirements (40 CFR part 403) as established by the POTW. Finally, some dyes and/or pigments manufacturers send their wastewaters to privately-owned centralized wastewater treatment facilities (CWTs) that are operated under NPDES permits. The Agency promulgated effluent guidelines for these facilities at 40 CFR part 437.

Under the CAA, there are existing regulatory requirements for the organic chemical industry that may apply to dyes and/or pigments production facilities, such as:

- 40 CFR part 60—several subparts on standards of performance for VOC emissions for new stationary sources.
- 40 CFR part 61—national emission standards for hazardous air pollutants on equipment leaks from fugitive emission sources, benzene operations, etc.
- 40 CFR part 63—several subparts on national emission standards for hazardous air pollutants (NESHAP) for the synthetic organic chemical manufacturing industry (SOCMI).
- 40 CFR part 68—chemical accident prevention provisions.
- 40 CFR part 82—protection of stratospheric ozone.

For example, 40 CFR part 60 subpart Kb provides standards of performance for volatile organic liquid storage vessels; subpart III provides standards of performance for VOC emissions from the SOCMI air oxidation unit processes; and subpart RRR provides standards of performance for VOC emissions from the SOCMI reactor processes. The NESHAP in part 63 subpart F applies to chemical manufacturing processing units; the NESHAP in part 63 subpart G applies to process vents, storage vessels, transfer operations, and wastewater; the NESHAP in part 63 subpart H covers equipment leaks; the NESHAP in part

63 subpart I applies to certain processes subject to the negotiated regulation for equipment leaks; and the NESHAP in part 63 subpart Q applies to industrial cooling towers.

There is also a proposed new source performance standard (NSPS) for volatile organic compound emissions for wastewaters from the synthetic organic chemical manufacturing industry (SOCMI) (*see* 59 FR 46780, September 12, 1994; and 63 FR, 68087; and December 9, 1998, amendments to the proposed rule based on public comments and changes to other SOCMI rules). This SOCMI Wastewater NSPS proposal will most likely be promulgated and published in the **Federal Register** in late 2003 or early 2004. Furthermore, the Agency proposed on April 4, 2002, Subpart FFFF NESHAP, to reduce hazardous air pollutants from the miscellaneous organic chemical manufacturing and the miscellaneous coating manufacturing categories (67 FR 16154). This proposal would apply to the production of a variety of SIC 28/NAICS 325 organic chemicals including organic dyes and pigments.

In addition, the Agency has promulgated performance standards and emission guidelines for new and existing commercial and industrial solid waste incineration units burning nonhazardous wastes (*see* 65 FR 75337; December 1, 2002). The Agency also has recently proposed a NESHAP for industrial/commercial/institutional boilers and process heaters identified as major sources of hazardous air pollutants (HAP) emissions (*see* 63 FR 1659; January 13, 2003).

There are also air emission regulations for steam generating boilers under 40 CFR Part 60 Subparts D, Da, Dc and Db that provide New Source Performance Standards (NSPS) limiting emissions from boilers built after certain dates. Moreover, the Agency has published an amendment for standards of performance for industrial-commercial-institutional steam generating units located at chemical manufacturing plants and petroleum refineries burning high-nitrogen byproduct/wastes (66 FR 49830; October 1, 2001).

F. What Industries and Wastes Are Covered in This Proposed Rule?

1. Scope of Industry Classifications

EPA based many of its decisions concerning the scope of the industries and wastes covered in this proposal on the *ED v. Browner* consent decree. Paragraph 1.h.(i) of the consent decree stipulates that: