

information of most potential utility came from the Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS), which contains information on potential and actual Superfund sites, and EPA Region or State files. We found further information on the Superfund Record of Decision System (RODS), which documents remediation actions at sites on the National Priority List (NPL).

We examined eleven cases closely, because these sites appear to involve sites where dyes and/or pigments production occurred. However, comments from a number of companies and trade associations on the 1994 proposal argued that most of these cases did not support the proposed listings in the 1994 rule. Commenters argued that the damage cases did not reflect current management practices, nor did the cases confirm risks were posed by the wastes proposed for listing. Upon further review, we agree that the damage cases have limited utility for determining current plausible mismanagement scenarios. The majority of damage cases (especially Superfund sites) were from sites that operated prior to implementation of the current RCRA regulations for hazardous wastes (*e.g.*, characteristically hazardous waste) or nonhazardous wastes (*e.g.*, current regulations for municipal landfills in part 258), and generally reflect management practices that no longer occur (such as disposal of untreated waste in unlined surface impoundments and indiscriminate disposal of wastes on the ground). Also, most of the facilities with damage cases have closed or ceased production of the in-scope dyes and pigments. Therefore, we believe these past damage incidents do not represent current waste management practices used by the dyes and/or pigments production industry.

In most cases, the available damage incident data do not attribute contamination to the specific dyes and/or pigments production wastes at issue in today's proposed rule. Contamination may be caused by other unrelated processes or activities onsite. Even where historical problems can be traced to dye or pigment materials, they are not very useful in assessing the potential risks for dyes and/or pigments production as they are currently generated or managed. The damage cases provide some anecdotal information to suggest that some dyes and/or pigments production wastes may yield environmental contamination when managed in the ways that lead to

the damage cases. Some damage incidents also provide information indicating the potential for the migration, mobility, and persistence of constituents in dyes and/or pigments production wastes. For example, the information on the chemicals contaminating the groundwater or other media at the damage sites show contamination from some of the constituents of concern in today's rule (aniline, 4-chloroaniline, 1,2-dichlorobenzene). This provides some support that these constituents may migrate to the groundwater and may present risks if the contaminated groundwater is consumed. However, this information does not assist in determining the mass loadings at which dyes and/or pigments production wastes could pose a hazard.

In general, because the wastes in the damage cases may include wastes not in the scope of today's rule, and because the cases reflect management scenarios that we do not believe are currently common or plausible, it is difficult to use them to reach conclusions as to whether the wastes under evaluation in today's proposal may pose significant risks. Certainly, it is inappropriate to use damage cases to ascertain at what mass loadings the dyes and/or pigments production wastes under evaluation may pose such risks. Thus, while the damage cases support the concept that some dyes and/or pigments production wastes may sometimes pose risks, EPA is relying upon its quantitative risk assessment in formulating today's proposal.

IV. Proposed Listing Determinations

A. What Are the Proposed Regulations for Dyes and/or Pigments Production Nonwastewaters?

We are proposing to list nonwastewaters from the production of dyes and/or pigments. Such wastes would become a listed hazardous waste if they are generated during the production of any of the specified classes of dyes and/or pigments products and if, at the point of generation, they contain any of the K181 constituents of concern at a mass loading equal to or greater than the annual mass loading limit identified for that constituent. All wastes generated during a calendar year up to the mass loading limits are outside the scope of the listing, even if the wastes subsequently meet or exceed the limits. Such wastes would be excluded from the listing from their point of generation, and would not be subject to any RCRA Subtitle C management

requirements for generation, storage, transport, treatment, or disposal (including the land disposal restrictions).

We are also proposing a conditional exemption for nonwastewaters listed in K181 with specific constituent loadings below a higher limit at the point of generation, so long as the wastes are disposed of in a Subtitle D or Subtitle C landfill cell subject to specified design standards. We are proposing the following listing description for these wastes:

K181: Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in paragraph (c)(1) of this section that are equal to or greater than the corresponding paragraph (c)(1) levels, as determined on a calendar year basis. These wastes would not be hazardous if: (i) The nonwastewaters do not contain annual mass loadings of the constituent identified in paragraph (c)(2) of this section at or above the corresponding paragraph (c)(2) level; and (ii) the nonwastewaters are disposed in a Subtitle D landfill cell subject to the design criteria in § 258.40 or in a Subtitle C landfill cell subject to either § 264.301 or § 265.301. For the purposes of this listing, dyes and/or pigments production is defined in paragraph (b)(1) of this section. Paragraph (d) of this section describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under §§ 261.21–24 and 261.31–33 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met.

We also specify the procedures and recordkeeping requirements that generators would use to demonstrate whether or not they exceed the loading limits and, if applicable, whether they meet the landfill design requirements. These implementation provisions are discussed in section V of today's proposal.

We are proposing that the constituents and the mass loadings in the listing (which would be specified in paragraph (c)(1) of § 261.32) would be those shown in Table IV–1. For the conditional exemption, we are proposing the constituent and mass loading limit shown in Table IV–2 (to be set out in § 261.32(c)(2)). These constituents and listing levels are based on the risk modeling for nonwastewaters disposed of in nonhazardous waste landfills summarized in section III.G.