

mass loading limits based on good-faith analytical efforts that demonstrate that the constituent could not exceed the mass loading limit by an order of magnitude (factor of ten), similar to the allowance specified for meeting the land disposal treatment standards for combustion residues (*see* § 268.40(d)(3)).

#### 7. Proposed Additions to Appendices VII and VIII of Part 261

As required under § 261.30(b), we are proposing to add the constituents that are the basis for the listings to Appendix VII of Part 261. Thus, we are proposing to add the constituents that are listed in Table IV–1 to Appendix VII as the basis for listing K181. In addition, a number of constituents in Table IV–1 are not currently listed in Appendix VIII to Part 261 as “hazardous constituents.” EPA places constituents on Appendix VIII if scientific studies show the chemicals have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms (*see* § 261.11(a)(3)). The Risk Assessment Background Document contains the detailed toxicological data for all constituents we evaluated, including the chemicals we are proposing to add to Appendix VIII: o-anisidine, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, and 1,3-phenylenediamine. We recognize that Appendix VIII already contains the chemical name “phenylenediamine” with a CAS number of 25265–76–3. This Appendix VIII listing represents a mixture of isomers (*i.e.*, benzenediamines with the presence of two amino-groups in unspecified locations on the benzene ring). We are proposing to add the specific isomers (1,2-phenylenediamine and 1,3-phenylenediamine) to clarify that these are listed on Appendix VIII, even though we believe that the existing listing for the mixed isomers would cover the specific isomers in question. If in response to comments we decide to add any additional constituents from Table III–2 to the loading limits in § 261.32(c)(1) or (c)(2), then we would also add these constituents to Appendix VII and VIII, if necessary. For example, under the alternative approach in section IV.A.4 using zero degradation rates, we would also add benzaldehyde, azobenzene and p-toluidine to Appendix VII of Part 261, and benzaldehyde and azobenzene would be additional constituents added to appendix VIII of part 261.

#### 8. Co-Generation With Out-of-Scope Wastes

A number of U.S. manufacturers of dyes and/or pigments produce products

other than those dyes and pigments classes described above in II.F.1. For example, some manufacturers might also produce sulphur or phthalocyanine dyes, dye intermediates, or other completely unrelated products (*e.g.*, surfactants). These facilities are likely to commingle their wastewaters from most or all of their processes for treatment prior to discharge. The resultant wastewater treatment sludges contain constituents from all of the mingled wastewaters.

We are proposing that, to the extent that a facility commingles wastewaters from the dye or pigment processes of interest in today’s rule with other “out-of-scope” wastewaters, the resultant sludge would be entirely subject to the K181 listing if the commingled waste contained sufficient mass loadings of the K181 constituents of concern to trigger the K181 listing. This means, for example, that the entire mass of toluene-2,4-diamine in a facility’s wastewater treatment sludge, would be compared to the K181 listing level for toluene-2,4-diamine, irrespective of whether some of that mass originated in processes other than the manufacture of azo, anthraquinone, perylene or anthraquinone dyes or pigments. Note that other process wastes that are commingled when generated (*e.g.*, dusts and fines) would also be covered by the K181 listing, if the commingled wastes contain some wastes that are in the scope of the listing.

We believe it is appropriate to propose that the scope of the listing cover mass contributions from other processes for several reasons. First, the toxicity and risk associated with the constituents of concern does not change as a function of the type of manufacturing process that is the source of that constituent in a commingled waste. For example, aniline in a facility’s wastewater treatment sludge that comes from the dye production process poses the same risk as an equivalent amount of aniline in that same sludge as a result of treating commingled aniline-bearing wastewaters from manufacturing photographic chemicals. Second, while the ED consent decree serves as a strong guide to the Agency in determining the scope of our listing determination (by establishing priorities and timeframes for the completion of specific listings), the consent decree in no way prohibits the Agency from proposing listings with broader or different scope. As an example, in the listing determination for inorganic chemical manufacturing wastes, we listed K178 (solids from manufacturing and manufacturing-site storage of ferric chloride from acids

formed during the production of titanium dioxide using the chloride-ilmenite process); *see* November 20, 2001 (66 FR 58258). The K178 listing addressed wastes not directly related to the wastes specified in the consent decree (*i.e.*, titanium dioxide production wastes (except for chloride process waste solids)). Finally, we believe that the proposed approach also is the most straightforward way of structuring this type of mass-based listing. The regulatory presentation in the CFR, as well as the implementation and enforcement of the listing, are simpler under the proposed approach.

Facilities impacted by this portion of the listing description (*e.g.*, those whose wastewater treatment solids contain the K181 regulated constituents from non-dyes and/or pigments processes) would have the option of segregating their wastewaters prior to commingling with wastewaters from the dyes and/or pigments processes covered by K181. Segregated solids that have no contribution of K181 constituents from the dyes and/or pigments processes of concern would not be subject to K181. We believe, however, that a more desirable environmental outcome (and perhaps technically more feasible) would be achieved if those facilities used the K181 listing levels as goals for their pollution prevention programs, and if they adopted process modifications designed to reduce overall loadings of the K181 constituents.

We request comments on this aspect of the proposed scope of the K181 listing. We also request comment on an alternative approach which would allow facilities to count only those mass loadings associated with azo/triarylmethane/perylenanthraquinone dyes and/or pigments manufacture when assessing whether their wastes exceed the K181 listing levels. For example, a facility may have specific chemical analytical data for its wastewater prior to commingling that might be used to demonstrate that the vast majority of a constituent of concern is not derived from wastes that are in the scope of K181. Using such data, the facility could demonstrate using a mass-loading calculation that the mass of the constituent resulting from the in-scope process is well below the mass loading limits specified in K181.