

B. How Does K181 Impact Wastes That Are Not Landfilled, Combusted, or Previously Listed?

1. What Is the Status of Wastes That Are Not Landfilled?

We are setting the § 261.32(c)(1) listing levels as the baseline levels that establish when nonwastewaters from the production of dyes and/or pigments pose sufficient risk to warrant listing as hazardous waste. Although these levels are derived from a landfill management scenario, we are proposing, consistent with our past practice, that these levels apply to all nonwastewaters within the scope of the listing definition, irrespective of how the waste may be managed. As a specific example of what this means, we are not setting separate "entry/exit" levels for wastes that might be combusted. We are assuming that wastes with constituent amounts below the listing levels do not pose risks in a combustion scenario, so the landfill-based listing limits provide sufficient protection. This is consistent with our general approach to unconditional hazardous waste listings. If we find that waste does not pose risks in a landfill or surface impoundment scenario, we do not list the waste, although we have not assessed the risks posed by combustion.

This approach is also similar to the proposed concentration-based listing determination for paint production wastes, where we also proposed threshold levels that were not based on any modeling of combustion practices. As we noted in that proposal, in past listing determinations where we attempted to assess risks from combustion, we found that the potential risks from the release of constituents through combustion would be at least several orders of magnitude below potential air risks from tanks or impoundments (*see* 63 FR 64371, November 19, 1998). We also noted that it is difficult to assess what goes into combustion units in relation to the residual constituents that might persist in ash or be released to the air, such as products of incomplete combustion.

Our assessment of the tank management scenario for wastewaters from the production of dyes and/or pigments indicates that the lowest allowable mass loadings associated with air releases from tanks for the constituents of concern is in the range of 2,000–3,000 kg/yr. Based on the analysis conducted in previous determinations (*e.g.*, 63 FR 64371, November 19, 1998), a comparable assessment of air releases from the combustion scenario would establish allowable mass loading levels several

orders of magnitude higher, well in excess of the proposed § 261.32(c)(1) listing levels.

2. What Is the Status of Wastes Destined for Combustion That Trigger the K181 Listing Levels?

We are proposing that nonwastewaters exceeding the listing loading levels will be K181 listed wastes even if they are combusted. This is consistent with our general approach to listing, in which we model land disposal units and, if we find risks of concern, promulgate a listing that includes wastes sent to combustion. We have taken this approach because we anticipate difficulties developing modeling that could adequately capture the various complex aspects of this combustion, including destruction efficiency, formation of toxic products of incomplete combustion, partitioning of uncombusted toxicants among air, scrubber water and ash, and transport.⁴⁹

However, we are soliciting comment on the option of exempting K181 nonwastewaters sent to combustion facilities. Without risk assessment results to rely on, we have qualitatively assessed the data we have gathered regarding current combustion management practices for dyes and/or pigments nonwastewaters. The TRI is our primary source of information. It shows that ten facilities send nonwastewaters offsite for thermal treatment and two facilities combust wastes onsite. All ten of the offsite treatment facilities are RCRA TSDFs. However, we cannot determine for certain whether the wastes of concern to this proposal are in fact being combusted in Subtitle C combustors, or in co-located Subtitle D combustors.

The two facilities that conduct onsite thermal treatment are Eastman (Kingsport, TN) and BASF (Huntington, WV). Eastman apparently operates both hazardous and nonhazardous waste combustion.⁵⁰ BASF operates a nonhazardous waste unit used to treat still bottoms and related wastes from an aniline/triarylmethane process.⁵¹ While

⁴⁹ While we attempted to model combustion of these wastes in the 1994 proposed listing determination for dyes and pigment wastes, commenters argued strenuously that our modeling was overly conservative, and presented stack testing for aniline showing much higher destruction efficiency for aniline than we had assumed, and risk assessment results showing very low risk (*see* "Comments on the 1994 Proposed Rule for Dye and Pigment Wastes," originally submitted by BASF Corporation, December 15, 1995, in the docket for today's proposal).

⁵⁰ See Listing Background Document.

⁵¹ See the docket for today's proposal for "Comments on the 1994 Proposed Rule for Dye and Pigment Wastes," originally submitted by BASF

this boiler is not permitted for managing hazardous wastes, it is covered by a State permit that sets low release limits for aniline (40 kg/yr).⁵² As part of BASF's 1995 comments on our initial proposed listing determination for these wastes, they submitted a risk assessment for this unit demonstrating low risk potential.

The available information regarding current combustion indicates that the majority, and perhaps all, of the wastes that are combusted are managed either in Subtitle C units, or units with air permits that specifically address key K181 constituents potentially present in those wastes. We solicit comments on whether this is sufficient information to support an exemption from K181 for wastes that are managed in combustion units that are permitted under Subtitle C, or that have other relevant CAA permits.

3. Applicability to Wastes That Are Already Hazardous

We are also proposing that wastes that are subject to another hazardous waste listing under § 261.31–33 or a hazardous waste characteristic under § 261.21–24 would not be subject to listing under K181. Generators would not count the mass of any constituent of concern in these wastes toward the loading limits in the K181 listing.

This avoids complications that would arise in implementing the loadings-based listing. For example, consider an azo dye producer who generates a sludge meeting the F004 listing due to solvent use during production. This F004 sludge could also be captured by the narrative description in the K181 listing, as it would be a nonwastewater from the production of azo dyes. If the facility also generates another separate wastewater treatment sludge from the production of azo dyes, the facility would need to assess the total mass of a constituent of concern for all wastes potentially subject to the K181 listing. Thus, the facility would have to add the mass of any constituents of concern in the F004 waste to the mass of the constituents present in the treatment sludge. It is possible that the additional mass from the F004 waste would cause the total mass of some constituent in the treatment sludge to meet or exceed the listing levels in § 261.32(c)(1) or (c)(2). However, the F004 waste is already hazardous and subject to full Subtitle C control. Regulating the treatment sludge based on the additional mass in the

Corporation, December 15, 1995 (Attachment C), for a more complete description of this unit.

⁵² See BASF's air permit in the docket for today's proposal.