

It is possible that nonwastewaters within the proposed scope of K181 (and the relevant mass loading limits) may have been disposed in landfills. However, the proposed listing for K181 waste is a mass loading-based listing, and it would be difficult to know whether the previously disposed wastes that meet the narrative description of K181 did, in fact, have constituent mass loadings that would be at or above the K181 regulatory levels. We don't anticipate that records documenting the mass of proposed constituents of concern in these wastes exist for previously disposed wastes.

Typically, the status of the previously disposed waste is not an issue, unless the waste is actively managed in some way. One way this question might arise is if the derived-from leachate is actively managed; we discuss this question below. This issue would arise more directly, however, if the waste previously disposed were to be excavated for further management, perhaps as part of a corrective action or other remediation effort. In this case, we believe it would be most practical to evaluate the managed waste as if it were newly generated. That is, a facility engaged in excavation of wastes that are potentially K181 would use the procedures in the proposed listing to determine if the constituents of concern meet or exceed the relevant mass loading limits. If the mass loadings are met or exceeded, then the actively managed waste would be K181. As noted, except in cases where the origin of the waste and its constituents are well documented, we believe classifying a previously disposed waste as K181 will be difficult, at best.

If actively managed landfill leachate and gas condensate derived from the newly-listed wastes proposed for listing in today's notice could be classified as K181, we would be concerned about the potential disruption in current leachate management that could occur, and the possibility of redundant regulation.<sup>58</sup> This issue was raised to the Agency in the context of the petroleum refinery waste listings (*see* 63 FR 42173, August 6, 1998). A commenter expressed concern that, because some of the commenter's nonhazardous waste landfills received newly-listed petroleum wastes prior to the effective date of the listing decision, the leachate that is collected and managed from these landfills would be classified as

hazardous. The commenter argued that this could lead to vastly increased treatment and disposal costs without necessarily any environmental benefit. After examining and seeking comment on this issue, we published a final rule that temporarily defers regulation of landfill leachate and gas condensate derived from certain listed petroleum refining wastes (K169–K172) that were disposed before, but not after, the new listings became effective, provided certain conditions are met. (*See* 64 FR 6806, February 11, 1999.) We proposed deferrals for similar wastes derived from landfills in the 1999 proposal for the dye and pigment industries (64 FR 40192, July 23, 1999), the inorganic chemical manufacturing industries (65 FR 55684, September 14, 2000), the chlorinated aliphatics industry (65 FR 67068, November 8, 2000) and the paint and coatings industry (66 FR 10060, February 13, 2001). We also promulgated a final listing determination for the inorganic chemical manufacturing industries that retains the deferral (66 FR 58258, November 20, 2001).

At the time this issue was brought to the Agency's attention in the context of the petroleum refinery waste listings, EPA's Office of Water had recently proposed national effluent limitations guidelines and pretreatment standards for wastewater discharges—most notably, leachate—from certain types of landfills. (*See* 63 FR 6426, February 6, 1998). In support of this proposal, EPA conducted a study of the volume and chemical composition of wastewaters generated by both subtitle C (hazardous waste) and Subtitle D (nonhazardous waste) landfills, including treatment technologies and management practices currently in use. Most pertinent to finalizing the temporary deferral for the petroleum refining wastes, EPA did not propose pretreatment standards for subtitle D landfill wastewaters sent to POTWs because the Agency's information indicated that such standards were not required. EPA subsequently finalized its decision that pretreatment standards were not necessary (*see* 65 FR 3008, January 19, 2000).

The conditions included in the temporary deferral we published on February 11, 1999 are that the leachate is subject to regulation under the Clean Water Act, and the leachate cannot be stored in surface impoundments after a period of two years. *See* 40 CFR 261.4(b)(15). We believe that it was appropriate to temporarily defer the application of the new waste codes to such leachate in order to avoid disruption of ongoing leachate

management activities, while the Agency decides if any further integration is needed of the RCRA and CWA regulations consistent with RCRA section 1006(b)(1). We believe that it is still appropriate to defer regulation and avoid leachate management activities, and to permit the Agency to decide whether any further integration of the two programs is needed. As such, we would be concerned about forcing pretreatment of leachate even though pretreatment is neither required by the CWA, nor needed. Therefore, we are proposing to temporarily defer the regulation of landfill leachate and gas condensate derived from management of K181 waste that we are proposing for listing in today's rule, with the same conditions as described in 40 CFR 261.4(b)(15) for petroleum wastes. We request comment on this proposed conditional deferral.

#### V. Proposed Requirements for K181 Determinations

We are proposing that listing determinations for K181 would be self-implementing. This means that you (the waste generator) would be responsible for determining whether or not your wastes are K181 listed hazardous wastes at the point of generation based on the proposed procedures we describe below. First, you must determine whether your nonwastewaters are included within the categorical K181 text (*i.e.*, nonwastewaters from the production of azo, triarylmethane, perylene and anthraquinone dyes or pigments). If so, then you would need to determine if your nonwastewaters could contain any of the K181 constituents of concern (CoCs). If your wastes at the point of generation could not contain any of the CoCs, we are proposing that your wastes are not subject to K181.

If your dyes and/or pigments production nonwastewaters might contain any of the K181 CoCs and you wish to demonstrate that the mass loadings of these constituents in your waste are below the regulatory levels, you would use one of two demonstration methodologies, depending on the annual quantity of waste you generate. If you generate or expect to generate 1,000 metric tons or less of these wastes in a calendar year, then you would have the option of testing your wastes or using your knowledge of the wastes to demonstrate that they are nonhazardous. If you expect to generate more than 1,000 metric tons/year of these wastes in a calendar year, then you would have to test the wastes annually to demonstrate that they are nonhazardous. Our reasons

<sup>58</sup> We do not believe that the mass loading limits in the proposed K181 listing would be useful in determining if the leachate was K181 waste. This is because the mass loading limits in K181 were derived for nonwastewaters, not landfill leachate, which are wastewaters.