

for proposing this two-tiered approach and requiring annual testing of larger quantity wastes are discussed in section V.A.3 below.

If you determine that part or all of your dyes and/or pigments production nonwastewaters are nonhazardous, we are proposing to require, under the authority of sections 2002 and 3007 of RCRA, that you keep certain records of your determination at the generating site (onsite). You must make a new demonstration each calendar year. Your wastes, however, would be hazardous if your onsite records and/or testing conducted by EPA or an authorized state demonstrate the presence of one or more CoCs at or above the listing mass loading levels. Your wastes would also be hazardous if the landfill disposal conditions were applicable, but were not satisfied.

Note that the proposed approach would mean that even if your mass loadings meet or exceed the specified mass loading levels on an annual basis, you may still manage as nonhazardous all wastes generated up to the mass loading limit. In other words, we are proposing that the K181 listing would apply to only the portion of wastes that meet or exceed the mass loadings. This is illustrated by the following example. Using the proposed mass loading for toluene-2,4-diamine in Table IV-1 (0.99 kg/yr.), if a facility generates 200 kg/yr, the amount up to just below the mass loading limit in § 261.32(c)(1) (*i.e.*, 0.99 kg/yr.) would be nonhazardous, and the facility would only be required to handle the waste containing the rest of the mass of toluene-2,4-diamine as hazardous waste. Furthermore, if the generator sends this waste to a landfill that meets the design requirements under § 258.40, then the generator may dispose up to just below the mass loading limit in § 261.32(c)(2) (*i.e.*, 140 kg/yr) as nonhazardous and handle the remaining portion above this limit as hazardous. This approach has some advantages. First, this is consistent with the results of the risk analysis, which indicates that quantities up to the loading limit could be safely managed as nonhazardous. Second, this would simplify the facility's concern with how to manage wastes generated during the year, if the facility is not certain how close the waste will come to meeting the loading limit for the entire year. Thus, if the facility has sufficient knowledge to know that the cumulative total for intermediate batches of the waste will not meet the loading limit, the facility can safely handle and dispose of this portion of the waste as nonhazardous. If or when the waste reaches the loading

limit, then the facility simply handles all subsequent waste as hazardous.

However, for wastes which meet or exceed the mass loading threshold, another alternative would be for the loading limit to apply to all of a generator's waste, including the waste generated before the mass loading limit is met or exceeded. Under this option, a generator would need a high level of certainty that wastes generated for the calendar year would not meet or exceed the mass loading limits in § 261.32(c)(1), or if the waste is sent to a landfill meeting the § 258.40 design criteria, the waste would have to be below the limits in § 261.32(c)(2). This approach would be more consistent with past listings, in which wastes with similar characteristics would be managed the same, rather than allowing a portion of the waste to be managed as nonhazardous. This approach would provide added incentive to a generator to manage potentially hazardous wastes properly and perhaps to reduce mass loadings through pollution prevention actions. However, this approach may result in serious problems for a generator who, in good faith, underestimates the mass loadings for a calendar year. If the generator manages the waste as nonhazardous, and then discovers that wastes generated later in the year cause the total waste to meet or exceed mass loading limits, then the generator would be in violation for improperly managing hazardous waste. Furthermore, if a Subtitle D landfill accepted the initial waste batches as nonhazardous, then when the generator reaches or exceeds the mass loading for that calendar year, then all of the waste from that generator in that calendar year would be hazardous waste subject to the K181 listing. The landfill owner would have placed hazardous waste in units that do not meet the requirements of Subtitle C. We solicit comment on this alternative approach.

The following discussion covers how we are proposing that you could demonstrate that your waste doesn't contain any CoCs at levels of concern (section III.A), and how you could demonstrate that your waste could be placed in a landfill that meets or exceeds the design criteria in § 258.40 as nonhazardous (section III.B). Section C describes the proposed status of your wastes prior to completion of your nonhazardous determination. Section D provides examples illustrating how the listing determination for K181 might work. Section E describes compliance and enforcement implications for the determinations.

A. How Do I Demonstrate That My Wastes Are Nonhazardous?

We are proposing that you could determine that your wastes are not listed as K181 because they don't contain CoCs at levels in excess of the listing levels in a number of ways.

1. Categorical Determination

You could determine that your wastes do not fall within the categorical K181 text included in the proposed regulations for this action under § 261.32(a). For example, if you do not produce any azo, triarylmethane, perylene, or anthraquinone products (as described in proposed § 261.32(b)), your nonwastewaters would not fall within the scope of the listing. Any wastes that are already hazardous due to the characteristics (§§ 261.21–261.24) or are otherwise listed (§§ 261.31–261.33) do not also fall within the scope of the listing. Wastewaters are not within the scope of the listing.

2. No K181 Constituents of Concern

We are proposing at § 261.32(d)(1) that you can use your knowledge of your wastes to demonstrate that your wastes do not contain any of the K181 CoCs identified in § 261.32(c)(1). You would have to compare the CoCs identified in § 261.32(c)(1) for K181 to constituents expected in your wastes. You could use process knowledge (*e.g.*, knowledge of the constituents in your wastes based on existing sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed) to make these initial determinations. If you determine that your potential K181 wastes at the point of generation do not contain any of the CoCs for K181 listed in § 262.32(c)(1), then you can determine your wastes to be nonhazardous. We are proposing that you keep documentation onsite for three years supporting your determinations that wastes are nonhazardous based on your knowledge that they do not contain any of the CoCs. We discuss enforcement of this and other recordkeeping provisions below in section E.

3. Low Quantity Versus High Quantity Wastes With K181 Constituents

If you generate less than 1,000 MT/yr of nonwastewaters that meet the K181 categorical description, you are eligible for determining that your wastes do not exceed the § 261.32(c)(1) or (c)(2) listing levels using the procedures proposed in § 261.32(d)(2). These procedures are based on your knowledge of your wastes, and do not require that you