

conduct waste analysis to support your demonstration. The procedures that apply to generators of quantities less than 1,000 MT/yr of waste are described further in section 4 below. If you generate more than 1,000 MT/yr, you would have to use the more extensive procedures proposed in §261.32(d)(3) to demonstrate that your wastes are not hazardous, as described further in section 5, below.

To support either a §261.32(d)(2) or §261.32(d)(3) demonstration, you will need to keep track of how much potential K181 waste you generate from January 1 to December 31 of each year. For the year that this listing becomes effective, the demonstration would cover the period of time between the effective date and December 31 of that year. We are proposing a calendar year basis for these demonstrations to ease implementation of the rule, ensuring that industry and regulators have a common, clear understanding of the time period covered by such demonstrations.

In the proposed categorical K181 text, these wastes are defined as nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that are not otherwise already listed or captured by the hazardous waste characteristics. To the extent that your nonwastewaters from other processes are segregated from wastes that fall within the scope of K181, they would not be included in your K181 waste quantity determination. Similarly, your dyes and/or pigments production wastes that are listed as hazardous for listings other than K181, or that are characteristically hazardous would not be included in your K181 waste quantity determination. However, if you generate a commingled waste (such as wastewater treatment sludge or other wastes) that contains waste contributions from both K181 and non-K181 sources (that are not otherwise hazardous), the entire commingled waste volume would be included in your K181 waste quantity determination, until and unless you were to segregate these sources. See discussion above in section IV.A.7 on commingled wastes.

The rationale for the selection of 1,000 metric tons per year (MT/yr) cutoff for the two tiers is included in the docket for today's rule.⁵⁹ In general, the

1,000 MT/yr cutoff for nonwastewaters (above which testing is required) is intended to ensure that the largest quantities of nonwastewaters generated by the dyes and/or pigments production facilities are tested and, at the same time, to minimize the burden on small generators. We believe that larger quantities of wastes have the potential for posing greater environmental risk than smaller quantities of wastes if a nonhazardous determination based on knowledge turns out to be inaccurate. Therefore, we believe it is reasonable to require larger quantity waste generators to test their wastes to make their determination, while smaller quantity waste generators are given the option to either test their wastes or use knowledge of their wastes annually to make a determination. We request comment on the appropriateness of giving smaller quantity waste generators the option of using knowledge of their wastes in making such a demonstration. We will consider requiring smaller quantity waste generators to test their wastes, like the larger quantity waste generators, if significant and defensible arguments are presented by commenters to support these requirements as necessary and appropriate. We will also consider adjusting the 1,000 Mt/yr cut off higher or lower, if we receive more precise information on waste quantities.

We request comment on an alternative to the two-tiered implementation approach discussed above. The alternative implementation approach would allow any generator to rely on either process knowledge or testing to evaluate the concentrations of CoCs in their nonwastewaters, irrespective of the annual quantity generated. This implementation approach would be similar to the existing program for determining whether a waste exhibits a hazardous characteristic (*see* 40 CFR 261.24 and 262.11). Although we prefer the two-tiered approach being proposed in today's rule, we will give careful consideration to any arguments presented or relevant waste analysis data submitted in response to today's proposal (*e.g.*, data showing that only a small portion of the wastes in the industry exceed the listing mass levels) to decide whether an alternative approach is warranted.

4. Section 261.32(d)(2) Demonstrations for Waste Quantities Less Than 1,000 MT/yr

If you generate less than 1,000 MT/yr of wastes potentially subject to K181, you can use knowledge to demonstrate that your waste does not contain mass loadings above either set of K181 listing levels. The following discussion

describes our proposed approach to this type of demonstration.

Estimate Waste Quantity: You must estimate how much waste you expect to generate in the next calendar year (*e.g.*, based on past annual waste generation data and/or current knowledge about future generation). You must include all wastes that meet the categorical K181 listing description to determine the total waste quantity for the dyes and/or pigments production nonwastewaters.

If you initially estimated that your waste generation would be less than 1,000 MT/yr and, at any time within the year you exceed 1,000 MT/yr, you would then no longer be eligible for making a §261.32(d)(2) demonstration, and would need to comply with §261.32(d)(3) to demonstrate that the remainder of the waste that you generate in that calendar year is not hazardous. This means that if you had not already been testing your wastes to demonstrate that they are not hazardous, you would then have to test your wastes for the remainder of the year.

Track Waste Generation: You must track the actual quantity of dyes and/or pigments production nonwastewaters generated during each calendar year. Again, you must include all wastes that meet the listing description for K181 to determine the total waste quantity for the dyes and/or pigments production nonwastewaters.

Estimate Waste Mass Loadings Using Knowledge: Under a §261.32(d)(2) determination, we are proposing that you could use knowledge of your wastes (*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 estimate waste concentrations for the constituents of concern in your waste, and to then calculate estimated mass loading levels for the CoCs. You should calculate the cumulative mass loadings of the CoCs in your waste over the course of the year, taking into consideration known variations in constituent concentration over the course of the year. You should estimate the mass loadings of the CoCs associated with each shipment of wastes during the year. So long as your cumulative estimated mass loading levels during the year remain below the regulatory levels, you can manage your waste as nonhazardous. Note that a new determination would have to be made in subsequent calendar years, with the possible changes noted below under *Subsequent Annual Determinations*.

Recordkeeping: If you make a knowledge-based determination that

⁵⁹ See Appendix J in the Listing Background Document for "Determination of Tiered Waste Analysis Requirements for Dyes and/or Pigments Production Nonwastewaters."