

down based on the concentrations of the constituent in the wastes being generated. A running total for the mass of a constituent will be the sum total of all mass calculations for the constituent in all quantities of nonwastewaters that have been generated from beginning of the year to present. At the end of the year, if the annual running total mass of a CoC is less than its listing mass level, it will be possible to demonstrate that a final annual mass of a CoC in the waste is below its listing mass level.

To determine the mass of a CoC, we are proposing that you use the maximum detected concentration or, if multiple samples have been collected, you may use either the maximum or a concentration based on the 95th percentile upper confidence limit on the mean, for each CoC and multiply it with the total waste quantity which it characterizes. However, we request comment on whether you should be allowed to average the concentrations of constituents detected in multiple waste samples. Alternatively, we request comment on whether use of another confidence limit of the mean (e.g., 90th or 80th percentile) would be more appropriate for concentrations of constituents detected in multiple samples.

If your tested wastes are representative of the wastes that will be generated during part or the rest of the year (or you can reliably determine that these wastes exhibited the maximum concentrations for the constituents of concern), then you could use these concentrations for each CoC to calculate the additional mass of each CoC in your waste based on additional waste that you generate for part or rest of the year.

**Compare Loadings to K181 Listing Limits:** You would need to track the cumulative mass loading of CoCs in your waste over the course of each year. As long as the cumulative mass for each CoC in your waste remains below the respective K181 levels during the course of the year (and you meet the landfill disposal condition, if applicable), then your corresponding waste quantity generated to that point in time would be nonhazardous. You would, however, continue to be responsible for maintaining records that support a nonhazardous determination. However, if the cumulative mass for any of the constituents of concern equals or exceeds its listing mass level during the course of the year, then at that point your waste would be listed hazardous waste and subject to all applicable RCRA Subtitle C hazardous waste requirements. Waste generated in the same year prior to that point would remain nonhazardous waste. It would not become subject to

the K181 listing. Earlier in section V. we solicited comment on an alternative approach that would have the listing determination applying to all wastes generated in any year that the listing levels are exceeded.

**Keep Records Onsite:** Under § 261.32(d)(3)(viii), we are proposing that you keep the following records onsite for three years to support a nonhazardous determination based on testing:

- The sampling and analysis plan used for collecting and analyzing samples representative of your wastes, including detailed sampling methods used to account for spatial and temporal variability of the wastes, and sample preparative, cleanup (if necessary) and determinative methods.

- The sampling and analysis data (including QA/QC data) and knowledge (if used to determine that one or more constituents of concern are not present in the wastes) that support a nonhazardous determination.

- The actual quantity of dyes and pigments nonwastewaters generated.

- The calculations performed to determine mass and annual running total mass levels for each CoC in the waste during the year that support a nonhazardous determination.

- If the annual testing requirements for your wastes were suspended based on three consecutive years of nonhazardous determinations (see Subsequent Annual Determinations in the following section), then you need to keep the process knowledge information used to support a nonhazardous determination. If testing is re-instituted (following suspension of testing requirements) because of a significant process change (as discussed further below), then describe this process change.

We request comment on the adequacy of the above recordkeeping requirements to support a nonhazardous determination. See section E below for a discussion of the consequences of failing to meet these recordkeeping requirements.

**Subsequent Annual Determinations:** We are proposing that you continue to perform waste analysis annually after you have determined your wastes to be nonhazardous for the purpose of verifying that your wastes remain nonhazardous.

We are proposing that subsequent waste analysis requirements could change under the following circumstances:

- (i) After completing annual testing requirements for your wastes under § 261.32(d)(3), if the annual running total mass levels for the CoCs during

any three consecutive years based on sampling and analysis results for the CoCs in your wastes are determined to be nonhazardous, then the annual testing requirements for your wastes would be suspended and you could use knowledge of your wastes annually to support a nonhazardous determination.

- (ii) After suspension of the annual testing requirements for your wastes, if dyes and/or pigments production or waste treatment processes generating these wastes are significantly altered (i.e., if it could result in significantly higher levels of the CoCs for K181 in your wastes and greatly increase the potential for your wastes to become hazardous), then the annual testing requirements for your wastes would be reinstituted. In order to again suspend the annual testing requirements for your wastes, the requirement under step (i) above would have to be met.

We request comment on whether the annual testing requirement should be continued beyond three years, if the generator determines all of its dyes and/or pigments production wastes to be nonhazardous for three consecutive years. Following suspension of annual testing requirements, the generator would still be liable if testing by EPA or an authorized state finds the waste to be hazardous.

## 6. EPA and State Oversight

Regardless of which approach you choose to determine whether your waste contains constituents in amounts lower than the § 261.32(c)(1) or (c)(2) listing levels, EPA and authorized States may make their own determinations for enforcement and oversight purposes. EPA and authorized States may sample your waste and calculate the mass of any constituent of concern. If EPA concluded that your waste met or exceeded the applicable mass limits, it could bring an enforcement action under section 3008 of RCRA for violations of hazardous waste requirements if you have not managed the waste in compliance with applicable Subtitle C requirements. Authorized States could use enforcement authorities under State law.

### B. How Do I Document Compliance With the Landfill Condition?

You may determine through a § 261.32(d)(2) or (3) determination that your wastes in fact contain K181 constituents at levels in excess of the § 261.32(c)(1) listing levels. If your demonstration shows, however, that the level in your wastes of the § 261.32(c)(2) constituent is below their corresponding § 261.32(c)(2) listing level, you may manage your wastes as nonhazardous if