

you dispose of them in a landfill cell subject to Part 258 or Subtitle C design standards.

As noted above in section IV, § 258.40 applies to new MSWLFs or new cells at existing MSWLFs. It requires use of a composite liner and leachate collection system or an equivalent design approved by the Director of an approved state program or by EPA. The composite liner must include a synthetic layer. The infiltration rates we modeled for landfills with synthetic liners were based on data from landfills with composite liners very similar to the design required under § 258.40. Consequently, we are proposing to allow disposal of dyes and/or pigments production nonwastewaters meeting the § 261.32(c)(2) mass limits in a municipal landfill cell that is subject to the § 258.40 design requirements.

We are specifying that the cell must be subject to these requirements because we believe that some operating landfills still use older cells that are not required to meet the design requirements. Our risk assessment shows that placing dyes and/or pigments nonwastewaters with constituent masses up to the § 261.32(c)(2) level in unlined landfills would not adequately protect human health and the environment.

EPA has found that 49 states have adequate permitting programs to implement the Part 258 regulations for MSWLFs. Permit programs must ensure that all MSWLFs in the state comply with the § 258.40 design standards. (See 40 CFR 239.6 (e).) No dyes and/or pigments production facility is located in the state that lacks EPA approval. Consequently, we think that all landfill cells subject to the Part 258 design standards are complying with those standards. We request comment, however, on whether we should also require a more specific demonstration that the landfill cell is in compliance with the design standards—and, if so, what it should consist of, and who would be responsible. One possibility would be to require the use of a cell subject to § 258.40 at a MSWLF that has a permit issued under a state program that EPA found to be adequate under 40 CFR part 239.

Some generators of dyes and/or pigments production wastes may choose to send nonwastewaters meeting the § 261.32(c)(2) limits wastes to hazardous waste landfills. New landfill units and lateral expansions of existing hazardous waste landfills are required to have “double” composite liners including synthetic components. See 40 CFR 264.301 and 265.301. Available data suggest that these liner systems have even lower infiltration rates than the

liners required under part 258. We are proposing to give generators the option of sending wastes with constituents up to the § 261.32(c)(2) levels to landfill cells subject to these stricter hazardous waste liner requirements.

We request comment on whether a third class of appropriate landfill should be included, namely, industrial solid waste landfill cells that have liner systems that meet the § 258.40 or Subtitle C standards. We request comment on what an appropriate demonstration might consist of, and who should be responsible for making the demonstration.

We are proposing to require you to keep records showing that you used a qualifying landfill cell. We are not proposing any specific requirements. Rather, we are proposing a more flexible performance standard similar to the documentation requirement in 40 CFR 261.2(f) for claims that materials are not solid wastes. One of the simplest ways to demonstrate fulfillment of the landfill disposal condition may be to provide, upon request by a compliance or enforcement official, a copy of a signed contract with either a municipal landfill subject to the relevant Part 258 requirements or a hazardous waste landfill subject to Subtitle C requirements. The contract would need to show that the landfill operator would use only cells subject to the applicable Part 258 or Subtitle C design requirements. In cases where such a contract does not exist, the following alternative types of documentation may be adequate: signed nonhazardous waste manifests, shipping papers, or invoices showing that wastes were placed in municipal landfills cells subject to the applicable Part 258 or Subtitle C design requirements.

We would regard a showing that all of your recent or ongoing shipments of potential K181 wastes have been sent to appropriate landfill cells as sufficient evidence of intent to continue to use appropriate landfill cells for any wastes that you are storing onsite prior to shipment.

As explained in more detail in section E below, if your potential K181 waste is not disposed of in a qualifying landfill cell, or you cannot demonstrate that it was, your waste is subject to the K181 listing from the time that it was generated, and EPA or an authorized state may take enforcement action against any person who failed to meet applicable Subtitle C requirements while they managed it.

### *C. How Would I Manage My Wastes During the Period Between Generation and Hazardous Waste Determination?*

If you generate wastes that are included within the categorical K181 text, you may not presume that your wastes are not subject to the listing until you make a determination which shows that your wastes are nonhazardous. From the time you generate the wastes to the time you make a determination on your wastes, you are responsible for storing your wastes properly. If your wastes are determined to be hazardous and you did not comply with applicable Subtitle C requirements prior to the determination, then you could be subject to an enforcement action.

### *D. Implementation Examples*

To assist you and the regulating authorities alike in understanding the proposed implementation procedures for K181, we present below some scenarios describing how different types of dyes and/or pigments production facilities would determine whether or not their nonwastewaters would be subject to the proposed K181 listing. These examples cover those circumstances where facilities assess whether they can use knowledge or must use sampling and analysis to determine that their wastes are not subject to regulation as K181. Note that these examples are not meant to describe all situations.

*Example 1:* Using knowledge to show waste contains no K181 constituents (§ 261.32(d)(1)).

Facility A manufactures a limited number of azo dyes, as well as a variety of dye product classes not addressed by the K181 listing scope. The facility reviews the raw materials used in the production of its azo dyes and determines that none of the K181 constituents are used in their azo dye production. In addition, the facility assesses their azo product line and determines that none of the K181 constituents would be present in their nonwastewaters as a result of reaction byproducts, or degradation of their products or raw materials, or as a result of being present in their raw materials as impurities. The facility documents its findings as per proposed § 261.32(d)(1), and manages their wastes as nonhazardous.

*Example 2:* Quantities Less Than 1,000 MT/yr: Using knowledge to show wastes do not exceed § 261.32(c)(1) listing levels (§ 261.32(d)(2)).

Facility B manufactures disazo and triarylmethane pigments. The facility routinely uses several K181