

under the K181 listing description, using a number of the chemicals listed under § 261.32(c)(1). The site is equipped with a centralized wastewater treatment (WWT) system that treats all of the wastewaters resulting from the plant's overall operations, discharging the treated wastewater to a surface body under an NPDES permit and generating 800 metric tons of sludge filter cake each calendar year. Moreover, the facility generates numerous batches of nonwastewaters, totaling 400 metric tons/year, from the multiple manufacturing process lines, such as filtration sludges, used filter aids/cloths, dust and fines, and unusable off-specification products. The facility manages these process nonwastewaters along with the WWT sludge.

Due to the combined nonwastewater quantity (800 metric tons of WWT sludge plus 400 metric tons of process solids) in excess of 1,000 metric tons/year, the facility must follow the § 261.32(d)(3) determination process, including sampling and analysis for the constituents expected to be present in the wastes, to demonstrate that the nonwastewaters do not meet the K181 listing criteria.

The facility determines through waste analysis that its nonwastewaters contain more than 500 kg/yr of toluene-2,4-diamine, which exceeds the § 261.32(c)(2) listing levels. The facility believes that much of the 500 kg/yr loading is attributable to production processes not covered by the K181 scope. Due to the commingled nature of the WWT sludge, however, the entire quantity of the sludge (as well as the other nonwastewaters linked to K181 processes) is subject to the K181 listing. This waste must therefore be managed as a hazardous waste, and must meet the corresponding BDAT standards for K181 before being disposed.

The facility conducts an audit of its production processes, and determines that it can reduce the levels of toluene-2,4-diamine in its nonwastewaters through a variety of pollution prevention techniques. After implementing the most cost-effective of these techniques, the facility successfully reduces its toluene-2,4-diamine loadings to below the § 261.32(c)(2) listing levels, and subsequently manages its waste in a municipal landfill subject to the design criteria in § 258.40. The facility documents its findings as per § 261.32(d)(3), and manages the waste as nonhazardous. The facility retains documentation regarding the landfill used to manage the waste as per § 261.32(d)(4).

Example 6: Quantities Greater Than 1,000 MT/yr: Using waste analysis to show wastes do exceed § 261.32(c)(1), but do not exceed § 261.32(c)(2) listing levels (§ 261.32(d)(3)), scope determination for F003 waste, incremental management of wastes generated prior to exceeding § 261.32(c)(1) levels.

Facility E generates 500 MT/yr of process nonwastewaters from a dye production process that uses solvents. The waste is already classified as F003 and therefore is not subject to the K181 listing, even though it contains toluene-2,4-diamine. The facility also generates wastewater treatment sludge at a rate of 10,000 MT/yr. The facility, using existing analytical data, calculates that the wastewater treatment sludge contains 10 kg/yr of toluene-2,4-diamine.

The wastewater treatment sludge is classified as K181 because it exceeds the § 261.32(c)(1) listing level of 0.99 kg/yr of toluene-2,4-diamine. The loading, however, does not exceed the § 261.32(c)(2) listing level of 140 kg/yr, so the wastes would be eligible for exclusion from K181 if the facility manages the wastes in landfills subject to the § 258.40 or Subtitle C landfill design standards.

The facility also generates discrete batches of waste every four to six weeks. By analyzing each batch and determining the toluene-2,4-diamine mass in each batch, the facility is able to ascertain at which point in time the cumulative mass loading in their waste approaches and exceeds the § 261.32(c)(1) listing level of 0.99 kg/yr. Until that time, the wastes are not classified as K181.

E. What Are the Consequences of Failing To Meet Recordkeeping Requirements or Listing Conditions?

In paragraphs (d)(1), (d)(2), (d)(3) and (d)(4) of § 261.32 of the proposed rule, we are proposing to require generators of dyes and/or pigments nonwastewaters from the listed product classes to keep records under the authority of sections 2002 and 3007 of RCRA. We are proposing that these provisions will be RCRA requirements and not conditions which must be fulfilled to prevent the waste from being classified as listed waste K181. Failure to comply with the proposed recordkeeping requirements could result in an enforcement action by EPA under section 3008 of RCRA or by an authorized State under similar State authorities. This section of the statute authorizes the imposition of civil penalties in an amount up to \$27,500 for each day of noncompliance. Authorized states could also bring action under

comparable state enforcement authorities.

We are proposing to make both sets of annual mass loading limits and the lined landfill requirements applying to wastes meeting the § 261.32(c)(2) limits conditions of the listing. Dyes and/or pigments nonwastewaters would become K181 wastes if anyone failed to fulfill these conditions. EPA or authorized states could bring enforcement actions for violations of hazardous waste requirements against anyone who has not managed the waste in compliance with applicable Subtitle C requirements.

Finally, we note that citizens may file suits under section 7002 of RCRA to enforce the recordkeeping requirements or other Subtitle C hazardous waste requirements if a condition is violated. Moreover, citizens can take action under section 7002 of RCRA, and EPA can take action under section 7003, if the management of dyes and/or pigments nonwastewaters may pose an imminent and substantial endangerment to human health or the environment.

A generator claiming that it is not subject to the listing would have to maintain sufficient documentation to demonstrate that it has not exceeded the relevant annual mass loading limits, and that it has sent its waste to a landfill subject to § 258.40 or Subtitle C design standards (if it claims it is subject to the conditional exemption for waste going to a lined landfill). EPA believes that basic documentation is integrally related to the substantive conditions of this proposal, since it would be difficult for a regulating agency (or even the generator) to know whether a given shipment of waste is hazardous absent records establishing the mass of constituents generated year-to-date. EPA requests comment on whether the proposed approach is sufficient to ensure enforceability of the proposed substantive conditions, or whether some or all of the proposed record-keeping requirements should be converted to conditions. EPA may make all or some of these requirements conditions in the final rule, or establish a general condition that the generator maintain sufficient records to demonstrate that it is remains outside the scope of the listing.

VI. Proposed Treatment Standards Under RCRA's Land Disposal Restrictions

A. What Are EPA's Land Disposal Restrictions (LDRs)?

Congress has specified that land disposal of hazardous waste is prohibited, unless the waste meets