

under NPDES, discharges to a POTW, or treatment in a RCRA exempt tank, are not included in the quantities requiring additional treatment as a result of the LDRs. Also, land disposed wastes that do not require alternative or additional treatment (*i.e.*, those that are currently treated to meet standards) are excluded from the required capacity estimates. Land disposed wastes requiring alternative or additional treatment or recovery capacity that is available onsite or within the same company also are excluded from the required commercial capacity estimates. The resulting estimates of required commercial capacity are then compared to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is restricted from further land disposal. If adequate capacity does not exist, EPA has the authority to grant a national capacity variance.

In making the estimates described above, the volume of waste requiring treatment depends on the current waste management practices employed by the waste generators before this proposed regulation is finalized and becomes effective. We collected data on waste management practices for the affected facilities from publicly available sources during the development of this proposed rule. However, we realize that as the regulatory process proceeds, generators of these wastes may decide to minimize or recycle their wastes or otherwise alter their management practices. Thus, EPA will monitor changes and update data on current management practices as these changes will affect the volume of wastes ultimately requiring commercial treatment or recovery capacity.

The commercial hazardous waste treatment industry can change rapidly. For example, national commercial treatment capacity changes as new facilities come on-line or old facilities go off-line and as new units and new technologies are added at existing facilities. The available capacity at commercial facilities also changes as facilities change their commercial status (*e.g.*, changing from a fully commercial to a limited commercial or "captive"—company owned—facility). Thus, EPA also continues to update and monitor changes in available commercial treatment capacity.

We request available data on the industry-wide total annual generation volumes of wastes affected by this proposed rule, including K181 in wastewater and nonwastewater forms, soil or debris contaminated with these wastes, the current and planned management practices for the wastes, and waste mixtures. We also request

data on the current treatment or recovery capacity capable of treating these wastes, facility and unit permit status related to treatment of the proposed wastes and any plans that facilities may have to expand or reduce existing capacity, or construct new capacity. Of particular interest to us is available information related to factors that may limit the availability of treatment technologies.

2. What Are the Capacity Analysis Results?

This preamble only provides a brief summary of the capacity analysis performed to support this proposed regulation. For additional and more detailed information, please refer to the "Background Document for Capacity Analysis for Land Disposal Restrictions: Newly Identified Dye and Pigment Process Wastes (Proposed Rule), November 2003" ("Capacity Background Document"), available in the RCRA docket established for today's proposed rule.

For this capacity analysis, we examined data on waste characteristics and management practices gathered for the purpose of the dyes and pigments hazardous waste listing determination based on the publicly available information. The data sources are described in detail in section II.H of this preamble.

If K181-derived wastewaters are generated, there is adequate wastewater treatment capacity existing for these wastes. As discussed in section IV.C above, EPA is proposing to treat the wastewater form of K181 by wet air oxidation or chemical oxidation followed by carbon adsorption or applying combustion for the constituents of concern. There is adequate wastewater treatment capacity available should the need for treatment of the wastewater form of the waste arise. The wastewater treatment capacity is detailed in the Capacity Background Document. Therefore, we are proposing not to grant a national capacity variance from LDR treatment standards for the wastewater form of K181. We are proposing that LDRs become effective when the listing determination becomes effective. In addition, we are not listing wastewaters generated at these facilities, so there is no need for additional treatment of wastewater from the production of dyes and/or pigments (other than K181-derived wastewaters).

As described in section IV.C above, EPA is proposing to establish numerical treatment standards or a method of treatment as the treatment standards for the constituents of concern of the newly

proposed waste. We expect that the constituents of concern in the nonwastewater form of the newly proposed waste are amenable to the treatment by combustion or other destructive technologies. EPA estimates, at most, 69,000 metric tons of nonwastewater forms of K181 that may require alternative commercial treatment and be managed offsite at a commercial hazardous waste treatment facility. Furthermore, EPA anticipates that much less than 69,000 metric tons of the wastes may require combustion capacity because not all of these wastes are expected to exceed the mass loading limits, and of those wastes that do exceed the loading limits, they may be managed in a Subtitle C combustion unit or may meet the proposed conditional exemption for nonwastewaters that are managed in landfills that meet or exceeds the design criteria in § 258.40 or in a Subtitle C landfill cell subject to either § 264.301 or § 265.301. We estimate that the commercially available sludge and solid combustion capacity is approximately 0.6 million tons per year and therefore sufficient to treat the newly proposed waste which might newly require treatment. We also expect that adequate landfill capacity exists for managing the residuals from treating this waste. Therefore, we are proposing to not grant a national capacity variance from the LDR treatment standards for the nonwastewater form of K181. We are proposing that the LDRs become effective when the listing determination becomes effective.

As discussed in section VI.D, we are also proposing to add the constituents of concern in K181 with numerical standards to the constituent lists for F039 and universal treatment standards (UTS). EPA does not anticipate that waste volumes subject to the treatment standards for F039 or characteristic wastes would increase because of the addition of these organic constituents to F039 and the UTS lists. Based on available data, waste generators already appear to be required to comply with the treatment requirements for other organic constituents in F039 and characteristic wastes. Therefore, additional treatment due to the addition of the constituents to the F039 and UTS lists may not be required. We also do not anticipate laboratory analytical problems as a result of this addition. However, we solicit comments regarding additional treatment needed, as well as the ability and capacity of laboratories to analyze wastes for these contaminants.

For soil and debris contaminated with these wastes, we believe that the vast