Quantitation Criteria (EQCs) and Description of Analytical Methods under the Waste Exit Rule explains why EQCs could not be created.

EPA is proposing that wastes containing these constituents (i.e., where an applicant has not documented that these constituents are not present—see section VIII.A.1.b.,) may remain eligible for an exemption under today's proposed rule by complying fully with LDR treatment standards applicable to the waste, as codified in 40 CFR part 268, regardless of whether the waste is to be land disposed. The Agency believes that any potential risks posed by these constituents are likely to be further reduced by applying LDR standards from part 268 to the waste, before the waste may be exempt, regardless of whether or not the waste is destined for land disposal. The Agency asks for comment on this approach.

An alternative approach would be to allow wastes with these constituents to exit without additional LDR obligations, but relying on continued, independent applicability of LDR treatment requirements to wastes destined for land disposal only. Another approach would be to prohibit wastes containing these constituents from being eligible for exemption under today's proposed rule. An additional approach would be that these constituents could be deleted from the exit table. The Agency requests comment on each of these alternatives.

EPA is not willing to propose to use LDR standards as exit levels for any other group of constituents. The technology-based LDR standards are not based on any risk assessment. A comparison of these standards with the multipathway risk levels that EPA produced shows that the LDR standards are sometimes more stringent and sometimes less stringent than risk-based levels. EPA believes that it is more prudent to base exit levels on risk assessment where possible because this better assures protection of human health and the environment. EPA views use of the LDR standards as the option of least preference, but necessary for exit for this group of constituents. EPA is willing to consider it only where there is no alternative to prohibiting a constituent from being eligible for exit.

V. Presentation of Exit Levels

Today's proposed exemption criteria involves setting exemption levels for toxicants in listed waste, and in some cases requiring additional compliance with the requirements set forth at 40 CFR part 268. To exit Subtitle C regulation as a listed hazardous waste, all the hazardous constituents listed in appendix X of part 261 would be required to be in concentrations less than or equal to the numeric exit levels and when specified, the waste would have to meet the applicable requirements at 40 CFR part 268. Appendix C to the preamble presents constituents, distinguishes between modeled and extrapolated constituents, and includes EQCs for each constituent.

A. Constituents With Modeled or Extrapolated Risk-Based Exit Levels

The Table A of proposed appendix X to part 261 presents exit levels for constituents with modeled or extrapolated risk-based levels which can be reliably quantified. See section IV.H. for a description of how this was determined. Listed hazardous waste would be required to contain concentrations at or below the specified exit levels to be eligible to be exempted from Subtitle C requirements other than LDR. In some cases we are proposing to change the land disposal restriction requirements at 40 CFR part 268 as well. A totals analysis would be required for both wastewaters and nonwastewaters to show that the constituent does not exist in the wastestream at levels above the exemption level.

For nonwastewaters, the Agency is also proposing that generators either use the TCLP test or a calculational screen to measure or calculate constituents' leachate from wastes. If the TCLP test shows leachate concentration in the waste is below the leach exit level, the waste would be considered to not pose a hazard to groundwater.

The Agency has in the past experienced difficulty in using the TCLP test for some types of waste. The Agency solicits comment on how to consider oily wastes and other wastes that are difficult to filter in the TCLP test or whose impact on groundwater is believed to be underestimated by the TCLP (such as materials subject to non-aqueous phase transport). Comment on alternative tests for these wastes, as well as comment on how to define such wastes for regulatory purposes is sought. A more complete discussion of oily waste can be found in VIII.A.1.a.iv.

Table A of appendix X of 40 CFR part 261 presents results of two alternatives for establishing the exit levels. These alternatives differ only in the benchmark used to calculate the modeled risk-based levels. For certain constituents there exists both a risk-based toxicity benchmark and a maximum concentration level (MCL) established under the Safe Drinking Water Act (SDWA). These numbers may differ because the MCLs are established using some non-risk considerations such as the cost of treatment and the availability of technology and consider exposure contributions from other sources for non-carcinogens. See section IV.D. of today's proposal for a complete discussion of toxicity benchmarks and MCLs.

B. Constituents With Quantitation-Based Exit Levels; Table B to Appendix X

Table B of proposed appendix X to part 261 presents quantitation-based exit levels for constituents with methods that cannot reliably quantify the modeled or extrapolated risk-based levels. All exit levels on Table B of appendix X to 40 CFR part 261 are based on EQCs. (See section IV.I.) Wastes containing any of these constituents must *also* comply with the applicable treatment standards set forth at 40 CFR part 268, the Land Disposal Restrictions (LDR) in order to meet today's proposed exemption, regardless of whether or not the waste is to be land disposed.

Some constituents on Table B of appendix X of 40 CFR part 261 do not have associated exit levels. Waste with these constituents may exit only after complying with the LDR treatment standards for the waste. (See section IV.I.2.b.)

C. How To Read the Exit Level Tables

For a waste to be eligible to exit Subtitle C under the exit proposed in today's rulemaking, every constituent in the waste must be below its exit level. Proposed appendix X of 40 CFR part 261, Tables A and B are the exit constituents and the exit levels. The following is a description of how to read the tables.

- The constituent list is derived from constituents listed in appendix VII, Basis for Listing Hazardous Waste; Appendix VIII, Hazardous Constituents; and appendix IX of part 264, the Ground-Water Monitoring List. (See section IV.C.)
- Table A represents constituents and their risk exit values—where the risk values can be measured analytically. (See sections IV.E., and IV.I.)
- Table B represents constituents with quantitation limits (EQCs) as exit levels—where the constituent cannot be measured at the modeled or extrapolated risk value. An additional condition of exit, compliance with treatment standards in 40 CFR part 268, exists for any waste becoming exempt under today's rulemaking by using a constituent exit level on Table B. (See section IV.I.2.b.)
- There will be overlap for some constituents between Tables A & B. For