

# Hazardous Waste Generator Improvements Rule

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# Resource Conservation and Recovery Act (RCRA)

- Enacted in 1976
- Administered by EPA and authorized states
- RCRA regulatory programs for three classes of waste:
  - municipal solid wastes (i.e., garbage)
  - industrial solid wastes
  - hazardous wastes



# Hazardous Waste Generator Improvements Rule

- Updates the regulatory program for hazardous wastes (listed or characteristic)
- EPA: many of the generator regulations (promulgated in 1980s) were outdated



# Promulgation of the Rule

- April, 2004: Advanced Notice of Proposed Rulemaking and public meetings
  - More than 500 comments submitted
- Non-regulatory actions in response to public comments:
  - Online guide, guidance memos, website update
- Determination that further revisions would require regulatory changes
- September, 2015: Rulemaking proposal, containing more than 60 changes to the generator regulations

# Promulgation

- Rulemaking proposal resulted in over 230 additional public comments
- October 28, 2016: Final rule signed
- November 28, 2016: Final rule published in the Federal Register

# Provisions

- Over 60 changes to the generator program
  - Some stricter
  - Some less strict
- Similar to proposed rulemaking



# Codification of Generator Categories

- Different sets of regulations, depending on which of three generator categories a facility fits into
- Outdated definition of SQG and no codified definition of CESQG or LQG
- 40 C.F.R. § 260.10: Codifies definitions of the generator categories, based on monthly volume of hazardous waste generated

# Generator Categories Defined

- Non-acute hazardous waste, acute hazardous waste, and residues from the clean-up of spills of acute wastes
- Can only be in one generator category per month
- CESQG = Very Small Quantity Generator



# Generator Category Definitions

TABLE 1 TO § 262.13—GENERATOR CATEGORIES BASED ON QUANTITY OF WASTE GENERATED IN A CALENDAR MONTH

Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from a clean-up of acute hazardous waste generated in a calendar month	Generator category
> 1 kg .....	Any amount .....	Any amount .....	Large quantity generator.
Any amount .....	≥ 1,000 kg .....	Any amount .....	Large quantity generator.
Any amount .....	Any amount .....	> 100 kg .....	Large quantity generator.
≤ 1 kg .....	> 100 kg and < 1,000 kg .....	≤ 100 kg .....	Small quantity generator.
≤ 1 kg .....	≤ 100 kg .....	≤ 100 kg .....	Very small quantity generator.



# Definition of acute hazardous waste

- Acute: those hazardous wastes that meet the listing criteria in § 261.11(a)(2)
  - Used to refer to hazardous wastes that are particularly dangerous to human health
- Non-acute: all other hazardous wastes



# Hazardous waste counting

- Generator category determination process
  - No new requirements
- Not required to count hazardous waste every single month, but EPA stresses that a facility's generator category can change frequently.
- EPA encourages generators to operate as LQGs all of the time, to simplify their compliance
- Sections clarifying how mixing solid wastes with hazardous wastes affects generator status



# Reorganization of provisions

- Hazardous waste generator regulations now in one place, 40 CFR Part 262 (exceptions for very lengthy regulations).
  - Each generator category now gets its own section of Part 262
- EPA's goal: foster improved understanding and compliance

# Reorganization

Provision	Original Citation in 40 CFR	New Generator Citation in 40 CFR
Definition of Generator Categories	§260.10, 261.5, & 262.34	§260.10
Hazardous Waste Determination and Recordkeeping	§262.11 and 262.40(c)	§262.11
Generator Category Determination	§261.5(c)-(e)	§262.13
VSQG Provisions	§261.5(a), (b), (f)-(j), and 258.28	§262.14
Satellite Accumulation Area Provisions	§262.34(c), 265.171, 265.172, and 265.173(a)	§262.15
SQG Provisions	§262.34(d)-(f) and 268	§262.16
LQG Provisions	§262.34(a), (b), (g)-(i), (m), and 268	§262.17
EPA Identification Numbers	§262.12	§262.18
Landfill Ban for Liquids	§258.28	§262.35

# Consolidation

- Previously, VSQGs could only treat or dispose of hazardous waste in an on-site facility or ship to a TSDF.
- Can ship to an LQG under the control of the same person, as long as certain conditions are met.
  - “Control”: the power to direct policies of the generator, whether through ownership of stock, voting rights, or otherwise
  - “Person”: includes an individual, trust, firm, federal agency, corporation, partnership, or political subdivision of a state



# Consolidation

- Shipped wastes must be labelled with “Hazardous Waste” and the hazards of the contents.
- LQG Requirements
  - Notify state on Site ID Form
  - Maintain records for three years
  - Regular LQG labelling and marking requirements
  - Manage waste in compliance with all the regulations applicable to LQG generators
  - Report waste received in Biennial Report

# Consolidation

- No limit for LQGs
- States can choose whether to adopt
- Interstate shipments
- Benefits: reduce operating costs and environmental liability, increase recycling, and reduce the amount of VSQG hazardous waste being sent to municipal solid waste landfills.
- Allows for designation of one facility as an LQG for simplified waste management





# Episodic Generation

- Non-routine event resulting in a smaller generator (VSQG or SQG) temporarily generating an abnormal amount of hazardous waste
- Previously, generator would have to comply with the higher generator category requirements
- “[U]nnecessary to protect human health and the environment.”
- Improvements Rule: generator can maintain its usual generator category during a non-routine event, provided it complies with a streamlined set of requirements.

# Episodic Generation

- Automatically allowed one event per year and can petition for a second. If the first is planned, second must be unplanned, and vice versa.
- Planned second event: generator must submit a petition in advance
  - “[T]he generator should allow enough time for the implementing agency to review the petition.” 81 Fed. Reg. 85786.
- Unplanned second event: petition must be in the form of a notification to EPA within 72 hours of the start of the event



# Streamlined requirements for VSQGs and SQGs

- Notify EPA
- Identify the start and end dates of the event (no more than 60 days apart)
- Designate facility contact with 24-hour availability
- Obtain a RCRA ID number
- Manage the waste in accordance with applicable waste accumulation requirements
- Maintain records associated with episodic event
- Use a hazardous waste manifest and transporter to ship the waste to a RCRA-designated facility w/in 60 days of the start of the event



# Failure to Comply

- Steps a generator up into the higher generator category, as before
- Generator becomes subject to the independent requirements for that higher category AND the conditions for exemption for that category
  - Unless generator complies with the conditions for exemption for the higher category, they become the operator of a non-exempt storage facility
- States can choose not to adopt

# Re-notification

- SQGs and LQGs must obtain an EPA identification number.
  - Previously, no requirement for SQGs to re-notify EPA if their site information changes. Thus, states have outdated info on SQGs.
- Improvements Rule: SQGs must re-notify beginning in 2021 and every 4 years thereafter.
  - Electronic reporting an option
  - Compliance date is delayed until 2021 to give states time to update their reporting forms, etc.
- States are required to adopt



# Emergency Preparedness and Planning

- Required documentation of attempts to make arrangements with local emergency responders.
  - No specific form is required. Flexibility regarding where the documentation can be retained.



# LQG Quick Reference Guide

- New LQGs submitting contingency plans must include a Quick Reference Guide
  - Existing LQGs must include a Quick Reference Guide when updating their contingency plan
- Elements:
  - Types/names of hazardous waste and associated hazards
  - Estimated maximum amounts of hazardous wastes
  - Hazardous wastes requiring unique/special treatment
  - Map showing where hazardous wastes are generated, accumulated or treated at the facility
  - Map of facility and surroundings to identify routes of access and evacuation
  - Location of water supply
  - Identification of on-site notification systems
  - Name of emergency coordinator(s) or listed staffed position(s) and 7/24-hour emergency phone number(s)

# Waiver of 50-foot buffer requirement

- Existing rule: LQGs must store containers holding ignitable or reactive hazardous waste at least 50 feet from the facility property line.
- Difficult for facilities with a small footprint (i.e., urban facilities)
- Now, facilities may obtain a written site-specific waiver from the authority have jurisdiction over the local fire code (i.e., the fire marshal)





# LQG Closure Requirements

- Existing regulations for LQGs accumulating hazardous wastes in tanks, drip pads, and containment buildings require closure of facility as a landfill should it fail to clean close
- EPA was concerned about LQGs accumulating in containers abandoning their facilities without notifying EPA or the states, sometimes resulting in a need for Superfund removal actions.
- LQGs accumulating wastes in containers must now close as a landfill if they fail to clean close.

# Biennial Reporting (BR)

- Clarification of BR requirements so they are consistent with existing guidance
  - Only LQGs must submit
  - Must report hazardous wastes generated throughout the entire odd-numbered year, even if for some of those months they were an SQG or VSQG.



# Satellite Accumulation Areas (SAAs)

- SQGs and LQGs accumulating hazardous waste in SAAs are now required to comply with the special requirements for incompatible wastes found at § 265.177.
  - Incompatibles must not be placed in same container unless § 265.17(b) is complied with.
  - Hazardous waste must not be placed in an unwashed container holding an incompatible unless § 265.17(b) is complied with
  - A container holding an incompatible must be separated from the other material by a dike, berm, wall, or other device



# Satellite Accumulation Areas

- New exceptions to the requirement that SAA containers stay closed at all times (except when adding/removing wastes):
  - When necessary to open the SAA container for the operation of equipment to which the container is attached
  - To prevent dangerous situations (i.e., buildup of extreme pressure or heat)

# Satellite Accumulation Areas

- Generators may now choose between using a maximum accumulation volume (1 quart for liquids) or maximum accumulation weight (1 kg, or 2.2 pounds, for solids) as their Satellite Accumulation quantity limit.
- If a container in an SAA is leaking, the generator must *immediately* transfer the hazardous waste to a container in good condition.



# Independent Requirements vs. Conditions for Exemption

- Independent requirements apply to all generators, regardless of whether they accumulate waste
  - Vary by generator category
  - Non-compliance: enforcement for that violation alone
- Conditions for exemption: requirements that generators accumulating waste must meet in order to remain exempt from RCRA storage facility permitting or interim status. Ex: LQG 90 day accumulation limit.
  - Failing to comply is not a violation in itself
  - Vary by generator category
  - Non-compliance: become operator of non-exempt storage facility
- § 262.10(a) lists which generator provisions are independent requirements and which are conditions for exemption

# Stricter Tone

- EPA: merely clarifying a distinction that already existed.
- State regulatory agencies will continue to have discretion regarding bringing enforcement actions when non-compliance with conditions for exemptions have been detected. 81 Fed. Reg. 85747

# Hazardous Waste Determinations

- Confirmation that determinations must be accurate
  - Cannot shift the duty to others
  - The amount of time necessary to make an “accurate” determination will vary
- Confirmation that determinations must be made at point of generation, before dilution, mixing or alteration
  - No exception for academic and industrial laboratories





# Hazardous Waste Determinations

- For wastes potentially exhibiting a hazardous characteristic, a determination must be made at any time that it might have changed its properties, such that its waste classification may have changed.
- SQGs and LQGs must identify all EPA hazardous waste codes applicable to a hazardous waste. Codes do not have to be marked on the container until the hazardous waste is being prepared for shipment off-site.
- If testing is necessary, the generator must manage the waste as hazardous waste until it gets the test results.

# Effective Date

- Federal level: May 30, 2017 (six months after publication in the federal register)
  - Alaska, Iowa, U.S. territories, and Tribal lands
- Authorized states:
  - More stringent provisions: authorized states must adopt by July 1, 2018 (or July 1, 2019, if a change in state law is needed)
  - Less stringent provisions: authorized states not required to adopt
- Revocation: notice and comment procedures

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# Questions ?

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