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- EPA: many of the generator regulations (promulgated in 1980s) were outdated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- Outdated definition of SQG and no codified definition of CESQG or LQG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**

<table>
<thead>
<tr>
<th>Quantity of acute hazardous waste generated in a calendar month</th>
<th>Quantity of non-acute hazardous waste generated in a calendar month</th>
<th>Quantity of residues from a clean-up of acute hazardous waste generated in a calendar month</th>
<th>Generator category</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt; 1 kg ........................................................................</td>
<td>Any amount .....................................................................</td>
<td>Any amount .............................................................................................</td>
<td>Large quantity generator.</td>
</tr>
<tr>
<td>Any amount ........................................................................</td>
<td>≥ 1,000 kg .....................................................................</td>
<td>Any amount .............................................................................................</td>
<td>Large quantity generator.</td>
</tr>
<tr>
<td>Any amount ........................................................................</td>
<td>≥ 100 kg ........................................................................</td>
<td>&gt; 100 kg ...............................................................................................</td>
<td>Large quantity generator.</td>
</tr>
<tr>
<td>≤ 1 kg ........................................................................</td>
<td>≥ 100 kg and &lt; 1,000 kg ........................................</td>
<td>≤ 100 kg ...............................................................................................</td>
<td>Small quantity generator.</td>
</tr>
<tr>
<td>≤ 1 kg ........................................................................</td>
<td>≤ 100 kg ........................................................................</td>
<td>≤ 100 kg ...............................................................................................</td>
<td>Very small quantity generator.</td>
</tr>
</tbody>
</table>
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

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

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