

Hazardous Waste Generator Improvements Rule Proposal



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History of the Rule

- Most of the generator rules were promulgated in the 1980s and are over thirty years old
- In 2004, ORCR conducted an evaluation of the generator program to improve program effectiveness, reduce compliance costs, and foster an improved relationship with states and the regulated community
- ORCR published an ANPRM on April 22, 2004, and held four public meetings soliciting comment on the effectiveness of the generator program
- ORCR received over 500 comments from 55 organizations and individuals, including 9 states, 5 federal agencies, 2 universities, 12 trade associations, and 22 companies
- Comments included: simplify the regulations, eliminate cross-referencing, codify guidance, provide flexibility for episodic generators, require re-notification for SQGs, provide one-pager basic information for contingency planning, clarify ambiguities, clarify concepts in satellite accumulation

History of the Rule

- After 2004, ORCR took a number of non-regulatory actions to respond to public comments and to improve the generator program:
 - Improved user-friendliness of generator website
 - Developed online guide to the “Hazardous Waste Generator Regulations”
 - Released “Closed Container” guidance
 - Issued memo for turnover of hazardous waste in tanks
 - Issued a Technical Corrections (direct final) rule
- ORCR also engaged in further program evaluation
 - 2012 Hazardous Waste Determination Program Evaluation
 - 2014 Retail NODA OMB Retrospective Review
- However, many issues with the generator regulations can only be resolved through rulemaking
- Provisions grew out of all of these evaluations

Context

Size of Generator Universe

Generator Status	Number of Facilities	Number of Missouri Facilities	Total Hazardous Waste Generated (tons)	Percent of Total Hazardous Waste Generated
CESQGs	293,000–470,000	487 -- 2545	59,000–144,000	<1%
SQGs	46,000–60,000	1529	70,000–152,000	<1%
LQGs	14,300	471	34.5 million	99%
Total	353,300–544,300	4545	34.7–34.8 million	100%

* Numbers of CESQGs and SQGs are estimates based on Biennial Report (BR) and limited state data. LQG number is derived from 2011 BR.

Goals of the Proposed Rule

The 2015 HW Generator Improvements Proposed Rule seeks to—

1. Reorganize the regulations to make them more user-friendly and thus enable improved compliance by the regulated community
2. Provide greater flexibility for hazardous waste generators to manage waste in a cost-effective manner
3. Strengthen environmental protection by addressing identified gaps in the regulations
4. Clarify certain components of the hazardous waste generator program to address ambiguities and foster improved compliance

Reorganization of Generator Regulations

Provision	Existing Citation	Proposed Citation
Generator Category Determination	§ 261.5(c)–(e)	§ 262.13
CESQG Provisions	§ 261.5(a), (b), (f)–(g)	§ 262.14
Satellite Accumulation Area Provisions	§ 262.34(c)	§ 262.15
SQG Provisions	§ 262.34(d)–(f)	§ 262.16
LQG Provisions	§ 262.34(a), (b), (g)–(i), (m)	§ 262.17
Episodic Events	None	Subpart L, § 262.230-234
Preparedness, Prevention, and Emergency Procedures for LQG	§ 265.30-56	Subpart M, § 262.250-265

CESQG Name Change

Conditionally Exempt Small Quantity Generators
become
Very Small Quantity Generators

- Former rules at 262.34 and new rules are not requirements that generators must meet.
- These rules are conditional exemptions from permitting for generators if they meet the requirements.
- Legal citation for a generator violation is “Failure to Obtain a Permit.”

CESQG Name Change

- 262.10(a)(2) defines a generator as a facility that stores hazardous waste unless it meets the “conditions for exemption” for a VSQG, SQG, or LQG.
- Regulations explain difference between conditional exemptions and independent requirements such as hazardous waste determinations and manifesting.

VSQG Waste Consolidation

Enhancing Generator Flexibility

Problem

- Some companies would like to be able to consolidate wastes from multiple VSQG (CESQG) sites for more efficient shipping and hazardous waste management
 - Reduce liability for company as a whole to ensure proper management of hazardous waste
 - Sending to a RCRA-designated facility is the most environmentally sound option
 - Currently an LQG needs a RCRA permit to receive CESQG wastes

VSQG Waste Consolidation

Enhancing Generator Flexibility

Proposed Solution

- Consolidate waste at an LQG under the control of the same person:
 - Person – as defined under RCRA
 - Control – power to direct policies at the facility

VSQG

- ~~Proposed: Labels waste containers with “VSQG Hazardous Waste”~~
- Final: Words “Hazardous Waste” and indication of the hazard

LQG

- Notifies state on Site ID Form that it is participating in this activity and identifies what VSQGs are participating
- Recordkeeping for each shipment
- Manages consolidated waste as LQG hazardous waste
- Reporting in Biennial Report

Episodic Generation

Enhancing Generator Flexibility

Problem

- Current RCRA rules lack flexibility to address an “episodic” change in a generator’s regulatory category:
 - Planned event (i.e., periodic maintenance such as tank cleanouts)
 - Unplanned event (i.e., production upset conditions, spill, acts of nature)
- Generators must comply with more comprehensive set of regulations for short period of time

Episodic Generation

Enhancing Generator Flexibility

Proposed Solution

- Allow generators to maintain their existing category provided they comply with streamlined set of requirements
 - Once per calendar year with ability to petition for second event (One planned and one unplanned)
 - Notify EPA or state 30 days prior to initiating a planned episodic event and have up to ~~45~~ 60 days to complete “episodic” event(s) and ship waste off-site; ~~30-day extension possible~~
 - Notify within 72 hours after unplanned event begins

Episodic Generation

Enhancing Generator Flexibility

- Streamlined Requirements for VSQGs:
 - Obtain RCRA identification number
 - Use hazardous waste manifest and transporter to send episodic waste to RCRA-designated facility (TSDF or recycler)
 - Manage the episodic hazardous waste in a manner that minimizes the possibility of an accident or release
 - Label episodic waste containers as “episodic hazardous waste,” indication of the hazards, and date event began
 - Identify an emergency coordinator
 - Maintain records associated with episodic event
- SQGs need only comply with existing SQG regulations and maintain records associated with the episodic event

Preparedness and Planning

Strengthening Environmental Protection

Contingency Plan Executive Summary

Problem

- The contingency plans LQGs are required to submit to local emergency responders are lengthy
- At the moment of an emergency, responders want quick access to the most important information in the plan

Proposed Solution

- Require new LQGs submitting plans and existing LQGs updating plans to include an ~~executive summary~~ “quick reference guide” that has the most critical information for immediate response to an event
- Responsive to Executive Order on Chemical Safety

Preparedness and Planning

Strengthening Environmental Protection

Contingency Plan *Executive Summary* Quick Reference Guide **Contents**

- 1. Types/names of hazardous waste and associated hazards
- 2. Estimated amount of each HW that may be present
- 3. ID any HW exposure requiring special medical treatment
- 4. Map of site showing generation and accumulation areas
- 5. Maps of surrounding area for access and evacuation
- 6. Location of water supply
- 7. ID on-site notification systems (alarms, phones, PA system)
- 8. Name of emergency coordinator and phone number

Preparedness and Planning

Strengthening Environmental Protection

Documenting Arrangements with *Local Emergency Planning Committees (LEPCs)* Emergency Responders

Problem

- Current regulations require generators to attempt to make arrangements with local emergency responders regarding the materials stored on site to prepare for a potential emergency
- There is no requirement to keep a record that the arrangements have been made

Proposed Solution

- Generators must document that they have made the attempt at required arrangements with emergency responders
- No specific form or type of documentation required
- Facilities with on-site response capabilities can receive a waiver

Preparedness and Planning

Generator Flexibility, Clarifying Regulations

- Update regulatory language to refer to Local Emergency Planning Committees
- Clarify that the scope of the contingency planning and emergency procedures applies *only to areas where hazardous wastes is being accumulated, HW point of generation, satellite accumulation, and areas of allowable treatment.*
- Remove requirement for personal information in records
- Revise regulations on placement of equipment to update for modern technology
- Clarify that contractors can cleanup releases

Hazardous Waste Determinations

Strengthening Environmental Protection

Documentation

Problem

- Generators consistently fail to make a correct hazardous waste determination, leading to the mismanagement of hazardous waste
 - Non-compliance rates range from 10 to 30 percent
- Reasons vary from not understanding RCRA to not even being aware of RCRA
- Current regulations clearly require maintaining documentation of determinations that a waste is hazardous, but not the alternative

Hazardous Waste Determinations

Strengthening Environmental Protection

Documentation

Proposed Solution

- Require SQGs and LQGs to keep documentation when a solid waste is determined to not be a hazardous waste.
 - Scope of provision would focus only on those solid wastes found in 40 CFR 261.2 (i.e., spent materials, sludges and byproducts, discarded commercial chemical products) that have potential to be a listed or characteristically hazardous waste in 40 CFR 261.3
 - Many states already require such documentation; the estimated number of determinations is low and often non-recurring
 - *This requirement will not be finalized*

Hazardous Waste Determinations

Clarifying Regulations

- Confirm that a generator's waste must be classified at its point of generation and at any time during the course of management for wastes potentially exhibiting a hazardous characteristic,
- Explain more fully how generators can use generator knowledge
- Explain more completely in the regulations in § 262.11 how a generator should evaluate its waste for hazardous characteristics
- Solid and hazardous waste determinations must be accurate

Labeling

Strengthening Environmental Protection

Problem

- Existing RCRA labeling regulations do not require generators to state the hazards of hazardous wastes accumulated in containers, tanks, drip pads and containment buildings
- Failure in risk communication
- Can impact workers, waste handlers, emergency responders and visitors
- Relevant areas on site: satellite accumulation areas, central accumulation areas, and at transfer facilities consolidating hazardous wastes from different generators

Labeling

Strengthening Environmental Protection

Proposed Solution

- Container labels must indicate the hazards of the contents of the containers
- ~~Container labels must have “plain English” words that identify container contents~~
- Flexibility in how to comply with this new provision; can indicate the hazards of the contents of the container using any of several established methods
- Tanks, drip pads, containment buildings can keep this information in logs or records kept near the accumulation site

Reporting

Strengthening Environmental Protection

Re-notification by SQGs

Problem

- EPA and most states have outdated and inaccurate databases of SQG universe information because there is no requirement to notify periodically
- This makes it difficult to make programmatic decisions, plan or execute inspections as effectively

Proposed Solution

- Require SQGs to re-notify every ~~2 years~~ 4 years staggered from biennial reporting beginning 2021
- Electronic reporting option

Reporting

Clarifying Regulations, Strengthening Environmental Protection

Biennial Report

Problem

- Universe of facilities and what hazardous waste must be reported is unclear.
 - Regulations in the CFR for the biennial report do not match the instructions to the report, requiring different data elements to be reported.
 - Complicated generation scenarios are not addressed by current regulations.

Reporting

Clarifying Regulations, Strengthening Environmental Protection

Biennial Report

Proposed Solution

- Regulations will not list specific items to be reported, but instead refer generators directly to the form instructions
- ~~LQGs must report all hazardous waste generated in a calendar year, even when it is managed the next calendar year~~
- ~~LQGs must report hazardous wastes generated throughout calendar year, even for months when they are an SQG~~
- ~~Recycling facilities must report wastes that are not stored prior to recycling~~
- ~~Consistent with existing reporting guidance~~

Final regulation will retain original 262.41(a) language regarding what to report

Satellite Accumulation Areas

Strengthening Environmental Protection, Enhancing Generator Flexibility, Clarifying Regulations

- Require that hazardous wastes not be mixed or placed in a container with other hazardous wastes that are incompatible
- Allow containers to remain open under limited circumstances, when necessary for safe operations
- Provide maximum weight in addition to volume for acute hazardous waste limit
- Clarify that “three days” means three calendar days
- Explain that when maximum weight or volume is exceeded, waste must be moved to a central accumulation area or TSDF or managed as a central accumulation area
- Rescind memo allowing reactive hazardous waste to be stored away from the point of generation

Waiver to 50-Foot Requirement

Enhancing Generator Flexibility

Problem

- The generator regulations require that containers holding ignitable or reactive waste must be located at least 15 m (50 feet) from the facility's property line, but meeting this requirement can be impossible, especially in urban areas where properties are less than 100 feet wide.

Proposed Solution

- Allow the generators to approach the *fire department* to apply for a waiver from the requirement if the *fire department* believes that the precautions taken by the facility make the waiver appropriate and safe.
- Instead of “fire department” the regulations will say “authority having jurisdiction over the fire code”

Closure

Strengthening Environmental Protection

Problem

- Existing closure 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. LQGs accumulating in containers do not have this requirement.
- Numerous documented cases exist where LQGs accumulating in containers abandoned their facilities only to require Superfund removal action, sometimes costing millions of dollars to cleanup

Proposed Solution

- Require closure as a landfill for when LQGs accumulating in containers fail to clean close
- Require LQGs to notify EPA or authorized state no later than 30 days prior to closing an accumulation area and within 90 days after closure of unit or facility

Closure

Strengthening Environmental Protection

Proposed Solution

- LQG may choose to close accumulation area when ceasing accumulation or wait until facility closes
- Notification required only when closing facility
- When ceasing use of an accumulation area, a notice must be placed in operating record so closure can occur during facility closure

Clarifying Generator Regulations

Problem

- The regulations that describe how to determine generator categories cause recurring questions.

Solution

- Clarify the regulations in a number of areas:
 - Determining generator category when generating acute and non-acute hazardous waste in the same month
 - Determining generator category when mixing solid and hazardous waste
 - Explaining procedures for making hazardous waste determinations and counting hazardous waste

Other Revisions

Clarifying Regulations

- Clarifying requirements for SQGs accumulating hazardous waste on drip pads and in containment buildings
- Defining terms not currently defined
- Deleting obsolete provisions
- Conforming changes
- Technical corrections

Stringency of Proposed Rule

- More stringent:
 - ~~Documenting hazardous waste determinations~~
 - SQG re-notification
 - Identifying risks of wastes being accumulated & labelling
 - ~~Notification of closure~~
 - ~~Biennial reporting for whole year~~
 - Executive summary for contingency plans
- Less stringent:
 - VSQG (CESQG) consolidation
 - Episodic generation
 - Waiver from 50-foot rule

Bottom Line:

- The proposed rule is an overhaul of the hazardous waste generator regulatory program
- The Agency:
 - Proposed 60+ changes to the regulations – some small, some big
 - Proposed ~30 additional technical corrections to the program
 - Took comment on practically every component of the generator regulatory program

Rule Process & Schedule

- Rule signed on Aug. 31, 2015
- Publication in Federal Register – Sep. 25, 2015
- Public comment period- 60 days – Nov. 24, 2015
- EPA reviewed public comments and has commenced work on final rule
- Effective date (promulgation) should be this year
- State adoption & authorization – 48 different schedules

Questions?



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