



**Florida Department of Environmental Protection**

# **Hazardous Waste Generator Improvements Final Rule**





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# Rule Process & Schedule

- Rule signed on October 28, 2016
- Publication in Federal Register November 2016
- Effective Date – 6 months from publication, May 30, 2017
- Rule in effect in IA, AK, the territories, and tribal lands on the effective date
- Authorized states run the RCRA program in their state and thus, will go through the state adoption & authorization process for this new RCRA rule
  - Authorized states will have to pick up the more stringent provisions, typically by July 1, 2018 (or July 1, 2019 if state law change is needed)
  - Authorized states can choose to pick up the less stringent provisions and those provisions that are considered equally stringent



# Stringency of Final Rule

- **More stringent:**
  - SQG re-notification
  - Identifying hazards of wastes being accumulated & labeling
  - Notification of closure
  - Closure as a landfill for LQGs accumulating hazardous wastes in containers that cannot meet closure performance standards
  - Biennial reporting for whole year, not just months the generator was an LQG
  - Biennial reporting for recyclers who don't store prior to recycling
  - Quick Reference guide for contingency plans
- **Less stringent:**
  - VSQG consolidation
  - Episodic generation
  - Waiver from 50-foot rule



# Goals of the Final Rule

The 2016 HW Generator Improvements Final Rule —

Over 60 changes to Hazardous Waste Generator Program:

1. Reorganizes the regulations to make them more user-friendly and thus enables improved compliance by the regulated community
2. Provides greater flexibility for hazardous waste generators to manage waste in a cost-effective manner through episodic generation and VSQG-LQG consolidation provisions
3. Strengthens environmental protection by addressing identified gaps in the regulations
4. Clarifies 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
VSQG 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

As part of this reorganization, the Agency made conforming changes to citations that reference § 261.5 and § 262.34



# VSQG Waste Consolidation

Enhancing Generator Flexibility

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

## VSQG

- Marks and labels waste containers with “Hazardous Waste” and the hazards

## LQG

- Notifies state on Site ID Form that it is participating in this activity and identifies which VSQGs are participating
- Recordkeeping for each shipment
- Manages consolidated waste as LQG hazardous waste including ensuring final treatment or disposal is at a RCRA-designated facility (TSDf or recycler)
- Reports in Biennial Report



# 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

## Final Rule

- Allows LQGs to approach the fire marshal to apply for a waiver from the requirement if the fire marshal believes that the precautions taken by the facility make the waiver appropriate and safe





# 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 when they are not regular generators of higher levels of hazardous waste



# Episodic Generation

Enhancing Generator Flexibility

## Final Episodic Generation Provision

- Allows generators to maintain their existing category provided they comply with streamlined set of requirements
  - One event per calendar year with ability to petition for second event
    - If first event is planned, the petition for a 2<sup>nd</sup> event must be for an unplanned event or vice versa
  - Notify EPA or state at least 30 days prior to initiating a planned episodic event
  - Notify EPA or state within 72 hours after an unplanned event
  - Conclude the episodic event within 60 days, including getting the episodic waste off-site



# 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 (TSD or recycler)
  - Manage the episodic hazardous waste in a manner that minimizes the possibility of an accident or release
  - Label episodic waste containers
  - 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



# Emergency Preparedness and Planning

## Strengthening Environmental Protection

### Making and Documenting Arrangements with Local Emergency Responders

#### Problem

- Previous regulations required generators to attempt to make arrangements with local emergency responders regarding wastes handled to prepare for a potential emergency
- There was no requirement to document that arrangements had been made (only that local emergency responders declined to enter into arrangements)

#### Final Rule

- Generators must document that they have attempted to make arrangements with local emergency responders (or that arrangements were sought but not obtained) and keep the documentation in the facility's operating record
- No specific form or type of documentation is required and additional flexibility is provided regarding where documentation can be retained



# Emergency Preparedness and Planning

## Strengthening Environmental Protection

### Contingency Plan Quick Reference Guide

#### Problem

- 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

#### Final Rule

- Requires new LQGs submitting contingency plans to also include a Quick Reference Guide (described as an Executive Summary in proposed rule) that contains information most critical for immediate response to an event
- Requires existing LQGs to include a Quick Reference Guide when they otherwise update their contingency plan
- Responsive to Executive Order 13650 on Chemical Facility Safety and Security



# Emergency Preparedness and Planning

## Strengthening Environmental Protection

### Contingency Plan Quick Reference Guide

- Contents of the Quick Reference Guide (eight 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 telephone number(s)
- EPA encourages generators to work with local emergency authorities and others to identify additional information that could be included



# Emergency Preparedness and Planning Generator Flexibility, Clarifying Regulations

## Other Clarifications

- Local Emergency Planning Committees (LEPCs) are not identified as the primary contact (as proposed) – although arrangements may be made with LEPCs if appropriate
- Generators are not required to make arrangements with appropriate local authorities (as proposed) and need only attempt to make arrangements
- Scope of the contingency planning and emergency procedures applies only to areas where hazardous wastes are being accumulated (including points of generation and SAAs)
- LQGs have flexibility to eliminate unnecessary employee personal information in the contingency plan
- SQGs and LQGs may determine the most appropriate locations for emergency equipment
- SQGs have the option to use contractors to address releases (containment/cleanup)
- Large facilities with internal response capabilities may seek a waiver from entering into arrangements with local authorities (final rule specifies waiver procedure)



# Hazardous Waste Determinations Strengthening Environmental Protection

## Documentation

### Problem

- Generators consistently fail to make an accurate 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





# Hazardous Waste Determinations

Strengthening Environmental Protection

## Clarifications that Improve Program Efficiency and Effectiveness

- Confirmed that a generator's hazardous waste determination generator's waste must be accurate and made at its point of generation and at any time during the course of management for wastes potentially exhibiting a hazardous characteristic
- Explained more fully how generators can use generator knowledge and tests in making hazardous waste determinations
- Explained more completely in the regulations at § 262.11 how a generator should evaluate its waste for hazardous characteristics
- Copied waste determination recordkeeping requirements from § 262.40 (c) into §262.11



# Marking and Labeling

Strengthening Environmental Protection

## Problem

- Previous RCRA labeling regulations did not require generators to identify and indicate the hazards of hazardous wastes accumulated in containers, tanks, drip pads and containment buildings
  - Resulted in a failure to communicate risks associated with wastes being accumulated/stored in different locations
  - Can impact workers, waste handlers, emergency responders and visitors
- Areas affected include:
  - Generator satellite accumulation areas and central accumulation areas
  - Transfer facilities consolidating hazardous wastes from different generators
  - TSDF container and tank storage areas



# Marking and Labeling

Strengthening Environmental Protection

## Final Rule

- Container and tank labels must now also indicate the hazards of the contents of the containers
- 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 (e.g., DOT hazard communication, OSHA hazard statement or pictogram, NFPA chemical hazard label, or RCRA characteristic)
- For drip pads and containment buildings, the generator can keep this information in logs or records near the accumulation unit
- Note, the labels are not required to include the identity of the contents of the container (as proposed)



# Marking and Labeling

Strengthening Environmental Protection

## Problem

- Generators do not always identify the specific RCRA waste codes associated with the hazardous wastes in a container
- As a result, receiving TSDFs may not know how to treat the wastes to meet land disposal restriction requirements

## Final Rule

- Prior to sending hazardous waste off-site to a TSDF, generators must mark their containers with the applicable RCRA waste codes or use a bar-coding system that performs the same function



# 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 after the initial notification
- This makes it difficult to make programmatic decisions, plan or execute inspections effectively

#### Final Rule

- Require SQGs to re-notify every 4 years unless states have more frequent re-notification requirements
- Electronic reporting an option
- Compliance date is delayed until 2021 to give states time to update their reporting forms, etc.



# Satellite Accumulation Areas

Strengthening Environmental Protection, Enhancing Generator Flexibility, Clarifying Regulations

## Clarifications

- Require that hazardous wastes not be mixed or placed in a container with other hazardous wastes that are incompatible
- Allow containers to remain open temporarily under limited circumstances, when necessary for safe operations
- Provided maximum weight in addition to volume for acute hazardous waste limit
- Clarified that “three days” means three consecutive calendar days
- Rescinded memo allowing reactive hazardous waste to be stored away from the point of generation
- Made marking and labeling requirements consistent with central accumulation areas



# 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
- The Agency and states are not notified when a facility closes

### Final Rule

- Require closure as a landfill if LQGs accumulating in containers fail to clean close
- Require LQGs to place a notice in their files no later than 30 days prior to closing an accumulation area and to notify EPA or the authorized state within 90 days after closure of the facility



# Drip Pads and Containment Buildings

## Problem

- Drip pads and containment building regulations only addressed LQGs and TSDFs – not SQGs accumulating hazardous wastes
- Therefore, it was not apparent that SQGs must comply with LQG regulations when generating SQG quantities of hazardous wastes monthly

## Final Rule

- Clarifies that SQGs may accumulate hazardous waste on drip pads and in containment buildings, provided they:
  - Meet the standards found in Part 265, subparts W and DD, for drip pads and containment buildings, respectively
  - Meet all of the conditions specified in § 262.16 for SQGs accumulating hazardous wastes in these units





# Additional Clarifications and Other Revisions

## Clarification

In this final rule, EPA outlines in regulatory language the distinction between independent requirements for all generators and conditions for exemption from the storage facility regulations for generators who are accumulating hazardous waste on site

- This distinction has always existed in RCRA and it has been the Agency's position that generators not complying with a condition of a generator exemption would be considered an operator of a non-exempt storage facility
- State regulatory agencies will continue to retain discretion and authority regarding bringing enforcement actions when non-compliance with conditions for exemptions have been detected
- EPA and states have always had, and continue to have, enforcement discretion to bring charges and seek penalties that accurately reflect the seriousness of the violations and their potential for harm



# Additional Clarifications and Other Revisions

## Problem

- The regulations that describe how to determine generator categories have caused recurring questions

## Final Rule

- Clarified the regulations in a new section § 262.13, including:
  - Procedures for counting hazardous waste
  - How to determine generator category when generating acute and non-acute hazardous waste in the same month
  - How to determine generator category when mixing solid and hazardous waste



# Additional Clarifications and Other Revisions

## Clarifying Regulations

- Defined new terms in § 260.10, including acute and non-acute hazardous wastes, VSQG, SQG (previously defined incorrectly), and LQG
- Clarified that RCRA § 3004 (c), which prohibits the disposal of bulk or non-containerized liquid hazardous waste or free liquids contained in hazardous waste in any landfill, also applies to hazardous waste generators.
- Deleted obsolete provisions; e.g. Project XL previously found at Part 262, subpart J and several Performance Track provisions
- Made technical corrections throughout generator regulatory program, such as slightly modifying the definitions of “Treatability Study,” “Universal Waste Handler,” “Universal Waste Transporter” in § 260.10; improving the readability of § 261.4(a)(7), etc.



# Major Impacts of Final Rule by Generator Category

New Provision	VSQG	SQG	LQG
LQG Consolidation of VSQG wastes	X		X
Episodic Generation	X	X	
50-foot Waiver			X
Marking & Labeling		X	X
Marking RCRA Waste Codes		X	X
SQG Re-notification		X	
Contingency Plan Quick Reference Guide			X
Closure Notification			X
Closure as Landfill if Can't Clean Close			X
BR Reporting by Recyclers Who Don't Store*		X	X



# Bottom Line:

- The final rule represents a much-needed update of the hazardous waste generator regulatory program
- The Agency:
  - Finalized approximately 60 changes to the regulations – some small, some big
    - Revisions and clarifications affect practically every component of the generator regulatory program
  - In addition, finalizing ~30 additional technical corrections to the program



QUESTIONS?