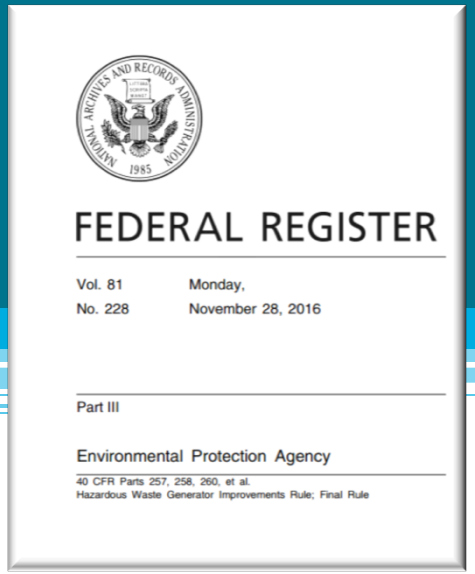
Hazardous Waste Generator Improvements Final Rule



US EPA
Office of Resource Conservation and Recovery

Questions during this Webinar

- We expect to have time at the end of the presentation for questions and answers.

- You may submit questions as we present. We will try to answer as many of your questions on the final rule as we can. To make the Q & A session most efficient, note the following guidelines:

  - Please make the context of your question clear, as we will be answering questions after covering all the topics. A slide number or topic name would be useful.

  - In order to make the session useful for all participants, we will not be able to address site-specific or very detailed questions in this forum.

Contents

- Background: RCRA Overview
- History of the Rule
- Context- Generator Universe
- Goals of the Final Rule
- Major Rule Provisions
  - Reorganization
  - Hazardous Waste Determinations (section 262.11)
  - Hazardous Waste Counting (section 262.13)
  - VSQG Requirements
    - General Provisions (section 262.14)
    - Episodic Generation (part 262 subpart L)
    - Consolidation of VSQG Waste at LQGs (Same Company)
  - Marking and Labeling (throughout generator regulations)
  - SQG and LQG Requirements (sections 262.16 and 262.17)
    - SQG Re-notification
    - Drip pads and containment buildings
    - Emergency planning and preparedness
    - 50-foot waiver
    - Closure
  - Reporting and Recordkeeping
  - Satellite Accumulation Areas
  - Additional Clarifications

Background

RCRA Overview

What is the Resource Conservation and Recovery Act (RCRA)?

RCRA was enacted by Congress in 1976 and regulates the management of solid waste (e.g., garbage), hazardous waste, and underground storage tanks holding petroleum or certain other chemicals.

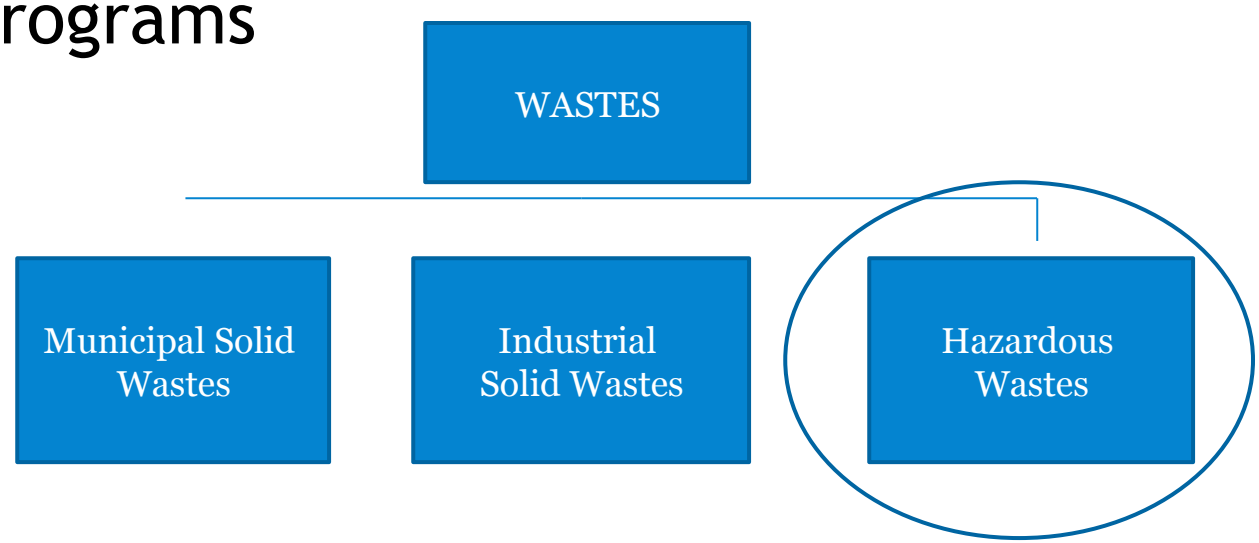
RCRA Program Goals

- To protect human health and the environment from the potential hazards of waste disposal.
- To conserve energy and natural resources.
- To reduce the amount of waste generated.
- Statutory Authority for Generator Improvements Rule: Sections 2002, 3001, 3002, 3003, 3004, 3007, 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921, 6922, 6923, 6924.

Background

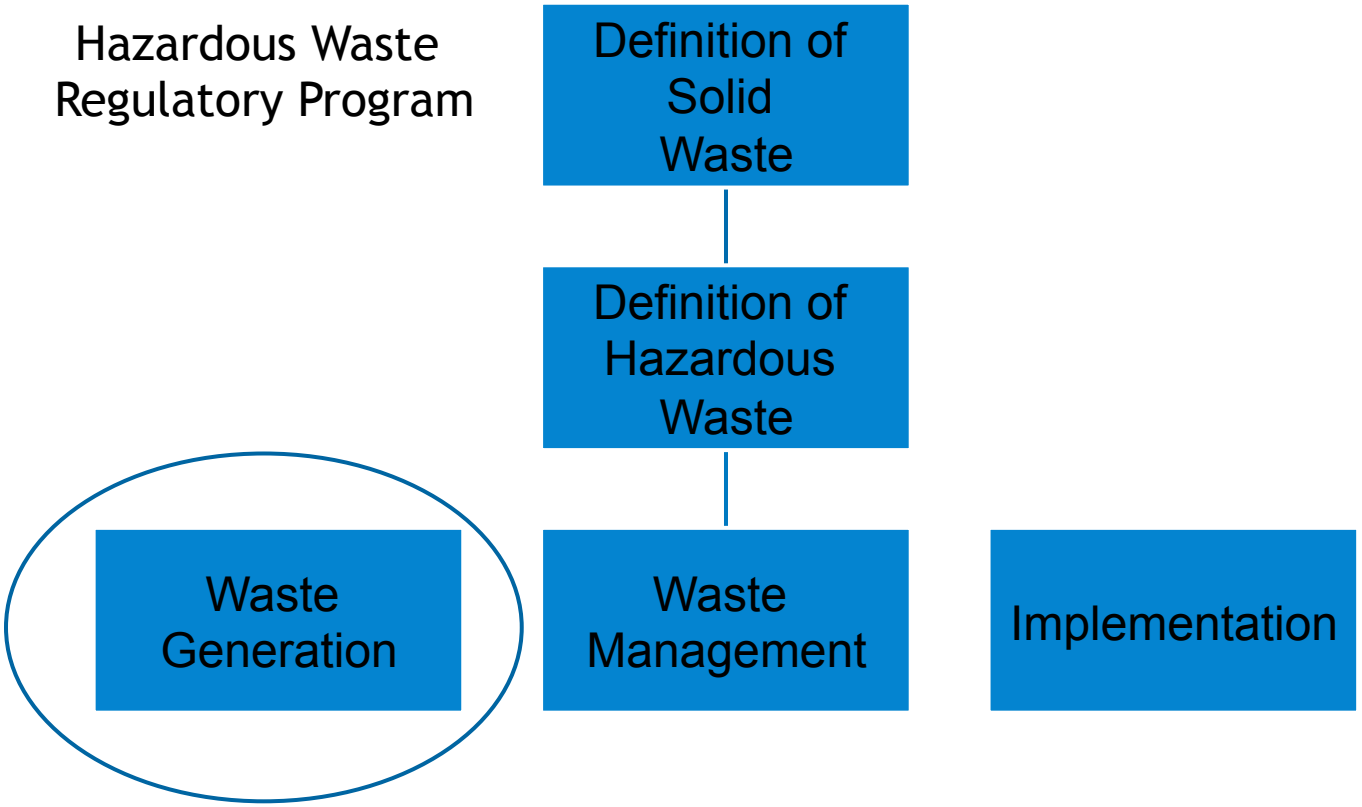
RCRA Overview

Waste Programs



Background

RCRA Overview



Background

RCRA Overview

Waste Generation

- Different levels of regulation for facilities that generate different volumes of hazardous waste on a monthly basis
  - Three categories of Generators:
    - Very small quantity generators (VSQGs) – renamed in this rule (previously called "conditionally exempt small quantity generators (CESQGs)")
    - Small quantity generators (SQGs)
    - Large quantity generators (LQGs)

Background

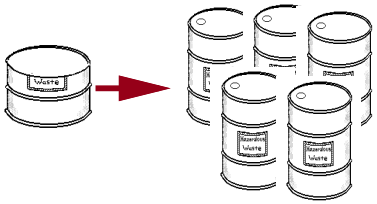
RCRA Overview

To determine your generator category, count all waste generated <u>in a calendar month:</u>

Very Small Quantity Generator (VSQG)

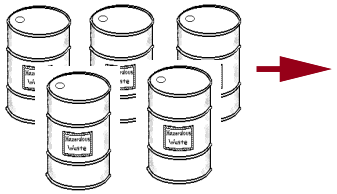
½ Drum or
27 Gal. Or
220 lbs. Or
100 Kg

Small Quantity Generator (SQG)



½ to 5 Drums or
27-275 Gal. Or
220-2200 lbs. Or
100-1000 Kg.

Large Quantity Generator (LQG)



>5 Drums or
>275 Gal. or
>2200 lbs. or
>1000 Kg.

Key: 55 Gallon Drum = 440 lbs. = 200 Kg.

- This final rule incorporates these definitions in the regulations at § 260.10 of hazardous waste regulations.

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. As part of this effort, published an ANPRM (April 22, 2004, 69 FR 21800) and held four public meetings soliciting comment on the effectiveness of the generator program
  - 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 among others

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
- We also engaged in further program evaluation
  - 2012 Hazardous Waste Determination Program Evaluation
  - 2014 Retail NODA OMB Retrospective Review
- However, EPA determined that many of the existing issues with the generator regulations could only be resolved through rulemaking.
- The September 25, 2015, proposed rule grew out of all of these evaluations and presented more than 60 proposed changes to the generator regulations, plus technical corrections, for public comment.

Public Comment on the Proposed Rule

- Over 230 public comments were received on the Generator Improvements Proposed Rule
- The commenters included:
  - 25 states
  - 10 local governments
  - More than 50 from academic institutions
  - About a dozen from the energy sector/utilities
  - More than 25 from industry and related trade associations
  - 10 from the waste management industry
- Comments covered all aspects of the rule, particularly waste determinations and marking and labeling; independent requirements and conditions for exclusion; VSQG consolidation; and episodic generation

Rule Process & Schedule

- Rule signed on October 28, 2016
- Publication in Federal Register – November 28, 2016
- Effective Date – 6 months from publication—May 30, 2017
- Rule goes into 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 facility 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

Context

Size of Generator Universe

Generator Status	Number of Facilities	Total Hazardous Waste Generated (tons)	Percent of Total Hazardous Waste Generated
VSQGs	353,400–591,800	46,000–148,000	<1%
SQGs	49,900–64,300	66,000–141,000	<1%
LQGs	20,800	35.2 million	99%
Total	424,100–676,900	35.3–35.4 million	**100%**

* Numbers of VSQGs and SQGs are estimates based on Biennial Report (BR) and limited state data. LQG number is derived from 2013 BR.

Goals of the Final Rule

The 2016 HW Generator Improvements Final Rule —

Over 60 changes to Hazardous Waste Generator Program that:

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

Hazardous Waste Determinations (262.11)

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

Final rule - Not Finalized

We are not requiring documentation of non-hazardous waste determinations (as proposed) but continue to recommend it as a best management practice

Hazardous Waste Determinations

Strengthening Environmental Protection

Finalized Clarifications to Improve Program Efficiency and Effectiveness

- Confirmed that a generator's hazardous waste determination must be accurate and made at its point of generation before any dilution, mixing or alteration, 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
- Required SQGs and LQGs to identify and mark RCRA waste codes on containers prior to sending hazardous waste off-site per § 262.32

Hazardous Waste Counting (262.13)

- Clarifies the process for a generator to determine its generator category each calendar month for generators of acute hazardous waste, generators of non-acute hazardous waste, and generators that mix acute and non-acute hazardous wastes.

- This provision also discusses how mixing of hazardous waste with non-hazardous waste impacts generator category.

Hazardous Waste Counting

- **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 cleanup 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**

Very Small Quantity Generators (VSQG)

- Limited requirements for the smallest generators under both the previous regulations and the new final rule.
- The new final rule provides new options for flexibility for VSQGs
  - Consolidation at an LQG under the same company (§§ 262.14 and 262.17)
  - Episodic Generation (part 262 subpart L)

VSQG Waste Consolidation

Enhancing Generator Flexibility

Problem

- Some companies would like to be able to consolidate wastes from their own VSQG sites for more efficient shipping and hazardous waste management
  - Reduces liability for company as a whole by ensuring proper management of hazardous waste
  - Sending to a RCRA-designated facility is the most environmentally sound option
  - Previously an LQG needed a RCRA permit to receive VSQG wastes

VSQG Waste Consolidation

Enhancing Generator Flexibility

Final Consolidation Provision

- 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 of the contents (§ 262.14(a)(5)(viii))

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 waste received in Biennial Report (§ 262.17(f))

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 2nd 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

(Part 262 subpart L)

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
  - 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

(Part 262 subpart L)

Marking and Labeling

Strengthening Environmental Protection

Marking and labeling requirements apply throughout the hazardous waste management regulations.

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 nationally recognized electronic system, such as a bar-coding system, that performs the same function

Marking and Labeling

Strengthening Environmental Protection

Problem- Tanks

- How does a generator accumulating hazardous wastes in tanks demonstrate that tank has been emptied or turned over from first entering the tank?

Final Rule

- Use inventory logs, monitoring equipment or other records to demonstrate that for:
  - Batch process: Tank has been emptied every 90 or 180 days
  - Continuous flow process: Estimated volumes of hazardous waste entering tank daily exit the tank with 90 or 180 days of first entering.

Small Quantity Generator and Large Quantity Generator Revised Requirements (§§ 262.16 and 262.17)

SQG provisions affected:

- Conditions for exemption
- Waste Identification
- Counting
- Marking and labeling
- Emergency response
- Drip pads and containment buildings
- SQG re-notification
- Episodic Generation

Small Quantity Generator and Large Quantity Generator Revised Requirements (§§ 262.16 and 262.17)

LQG provisions affected:

- Conditions for exemption
- Waste Identification
- Counting
- Marking and labeling
- Emergency response
- Biennial Reporting
- Closure
- VSQG consolidation
- 50 foot waiver

SQG Re-Notification

Strengthening Environmental Protection

Problem

- EPA and many 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.

(§ 262.18(d))

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

(§ 262.16(b)(4))

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

(§ 262.16(b)(8)(vi) & § 262.256)

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

(§ 262.262)

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 and Areas of Flexibility

- 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)

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 sometimes impossible, especially in urban areas where properties are less than 100 feet wide

Final Rule

- Allows LQGs to approach the authority having jurisdiction (AHJ) over the fire code within the facility's state or locality (e.g., fire marshal) to apply for a waiver from the requirement if the AHJ believes that the precautions taken by the facility make the waiver appropriate and safe

(§ 262.17(a)(1)(vi))

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 hazardous wastes 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

Closure

Strengthening Environmental Protection

Final Rule

- Require closure as a landfill if LQGs accumulating hazardous wastes in containers fail to clean close
- Notification
  - Closure of waste accumulation area – Require LQGs to place notice in their operating record within 30 days after closure identifying location of unit within facility; or meet closure performance standards and notify EPA.
  - Closure of facility –
    - Notify EPA or authorized state no later than 30 days prior to closing facility, and
    - Notify EPA or authorized state within 90 days after closing facility that it has complied with closure performance standards or notify if it can't clean close
    - LQG can request extension but must notify EPA or authorized state within 75 days after closing facility

(§ 262.17(a)(8))

Reporting

Clarifying Regulations, Strengthening Environmental Protection

Biennial Report (BR)

Problem

- Universe of facilities and what hazardous waste must be reported is unclear
  - Inconsistency between data elements found in BR regulations vs. the instructions for completing BR
  - Inconsistency between what's been stated in the Federal Register vs. BR instructions as to what wastes to report
  - Facilities not storing prior to recycling previously were not required to report

Reporting

Clarifying Regulations, Strengthening Environmental Protection

Final Rule: Biennial Report (BR) Clarifications Consistent with Existing BR Guidance

- Regulations will not list specific data elements to be reported, but instead refer generators directly to the form instructions
- LQGs must report all hazardous waste generated and managed on-site in reporting year; LQGs that generate and manage hazardous wastes off-site must follow existing BR guidance
- LQGs must report hazardous wastes generated throughout the calendar year, even for months when they are an SQG

(§ 262.41)

Closing Regulatory Gap

- Recycling facilities that do not have a RCRA permit because they don't store must report wastes being recycled

(§ 261.6)

Reporting and Recordkeeping

Clarifying Regulations, Strengthening Environmental Protection

- EPA is not finalizing the following reporting and recordkeeping provisions it either proposed or took comment on. These include:
  - Maintaining documentation of waste determinations until the facility closes
  - Notifying the state or EPA of closure of a waste accumulation unit at a facility
  - Requiring documentation of container weekly inspections

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

(§ 262.15)

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

(§§ 262.1 & 262.10)

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 Economic 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 is:
  - Finalizing 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

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