



EM CX FACT SHEET 17-03

Hazardous Waste Generator Improvement Rule 81 FR 85732

PURPOSE OF THIS FACT SHEET

On November 28, 2016, EPA published a final rule entitled, “Hazardous Waste Generator Improvement Rule”, promulgating over 60 revisions and new provisions and 30 additional technical corrections to the hazardous waste generator regulatory program. These represent the most significant modifications to the Hazardous Waste Generator regulations since 1986. This fact sheet highlights the major components of the new rule relevant to the U.S. Army Corps of Engineers. It is not intended to be a comprehensive summary of all aspects of the Rule.

EFFECTIVE DATE OF THE RULE

This final rule was effective at the federal level on May 30, 2017. This means that the rule is immediately effective only in Alaska, Iowa, the Indian Nations, and the territories Puerto Rico, American Samoa, N. Mariana and US Virgin Islands. In the other states, provisions of the rule will not become effective until or unless the state adopts the new provisions. Some provisions are more stringent, some provisions are less stringent, and some provisions are neither more nor less stringent. RCRA authorized states must adopt more stringent requirements, but can choose to implement, or not implement the less stringent provisions and those provisions that are considered as equally stringent. Therefore, it is essential that generators not indiscriminately conform to the federal requirements without first evaluating that status of adoption within RCRA authorized states.

NEITHER MORE NOR LESS STRINGENT

Authorized states may, but are not required to, adopt these changes

1. Reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of preamble)
2. Defining central accumulation area and the generator categories (section VII.C of preamble)
3. Mixing a non-hazardous waste with a hazardous waste (section IX.C of preamble)
4. Repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of preamble)
5. Replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of preamble)
6. Deleting the performance track and laboratories XL regulations (section IX.P of preamble)
7. Technical corrections and conforming changes to various parts of the RCRA regulations (section XII of preamble)

LESS STRINGENT

Authorized states may, but are not required to, adopt these changes

1. Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of preamble)
2. Allowing LQGs to apply for a waiver to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of preamble)
3. Allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event, so long as they comply with specified conditions (section X of preamble)

MORE STRINGENT

Authorized states will be required to modify HW programs to incorporate equivalent provisions

1. Requiring SQGs, LQGs and transfer facilities to better define the risks of HW accumulated in tanks, containers, drip pads, and containment buildings, as well as when HW is accumulated in SAAs (section IX.E. of preamble)
2. Requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of preamble)
3. Requiring SQGs to re-notify every four years (section IX.L of preamble)
4. Requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (section IX.N of preamble)
5. Requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of preamble)
6. Requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. (section VIII of preamble)

IMPORTANT NEW DEFINITIONS (§260.10)

Central accumulation area (CAA) means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either § 262.16 (for small quantity generators) or § 262.17 of this chapter (for large quantity generators). A central accumulation area at an eligible academic entity that chooses to operate under 40 CFR part 262 subpart K is also subject to § 262.211 when accumulating unwanted material and/or hazardous waste.

Large quantity generator (LQG) is a generator who generates any of the following amounts in a calendar month: (1) Greater than or equal to 1,000 kilograms (2200 lbs) of non-acute hazardous waste; or (2) Greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter; or (3) Greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter.

Small quantity generator (SQG) is a generator who generates the following amounts in a calendar month: (1) Greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2200 lbs) of non-acute hazardous waste; and (2) Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter; and (3) Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter.

Very small quantity generator (VSQG)(Replaces Conditionally Exempt Small Quantity Generator) is a generator who generates less than or equal to the following amounts in a calendar month: (1) 100 kilograms (220 lbs) of non-acute hazardous waste; and (2) 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter; and (3) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter.

INDEPENDENT REQUIREMENTS VS CONDITIONS FOR PERMIT EXEMPTIONS

In this Rule, EPA emphasizes two types of standards for the hazardous waste generator program:

- Conditions that must be met in order to obtain an exemption from permitting (conditions for exemption); and
- Requirements that apply to generators regardless of whether or not they choose to obtain an exemption from the permit requirements (independent requirements).

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 an operator of a non-exempt storage facility. See §262.10 for details.

HAZARDOUS WASTE DETERMINATIONS AND RECORDKEEPING

As has always been the case, a person who generates a solid waste must make a hazardous waste determination. However, under the new Rule, records must now be maintained of those determinations. See newly revised § 262.11 for specifics. It is summarized as follows:

- (a) Make the hazardous waste determination at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs.

- (b) Determine whether the solid waste is excluded from regulation under 40 CFR 261.4. This includes wastes such as household waste, drained oil filters, certain solvent contaminated wipes, etc.
- (c) If the waste is not excluded under 40 CFR 261.4, use knowledge of the waste to determine whether the waste meets any of the listing descriptions (F, K, P, or U listed).
- (d) Determine whether the waste exhibits one or more hazardous characteristics (D001 – D043).
- (e) If the waste is determined to be hazardous, refer to parts 261, 264, 265, 266, 267, 268, and 273 for other possible exclusions or restrictions pertaining to management of the specific waste. Examples of exclusions include scrap metal under 261.6, residues in empty containers under 261.7, lead-acid batteries under 266, and universal wastes under 273.
- (f) Maintain records of hazardous waste determinations. Further discussed below. (This applies to LQGs and SQGs.)
- (g) Mark containers of HW with all appropriate waste codes prior to shipping the waste off site. (Applies to LQGs and SQGs.)

GENERATOR CATEGORY DETERMINATION

There are three categories of hazardous waste generators: (1) LQGs, (2) SQGs, and (3) VSQGs.

EPA made a universal change to the rule by replacing the term for the smallest category of generator, “conditionally exempt small quantity generator (CESQG),” with “very small quantity generator.” EPA noted this revision is to remove confusion behind the phrase “conditionally exempt”. All three categories of generators can be conditionally exempt from storage facility permit, interim status, and operating requirements, not just the smallest category.

In this final Rule, new §262.13 clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates to determine their generator category. Essentially, generators count all waste generated per month except:

- Excluded waste listed in 40 CFR 261.4(a) and (b). These are not counted because they are either not solid waste or not hazardous waste. Examples include certain types of solvent contaminated wipes, drained oil filters, household waste, arsenical-treated woods, and petroleum contaminated media and debris.
- Waste exempt under 40 CFR 261.4(c) through (f), 261.6(a)(3), 261.7(a)(1), and 261.8. Examples include laboratory samples, scrap metal, and residues of HW in empty containers.
- Hazardous waste immediately managed via elementary neutralization.
- Hazardous waste recycled onsite without prior storage or accumulation.
- Used oil managed under 40 CFR 261.6(a)(4) and 279.
- Spent lead-acid batteries managed under 40 CFR 266 subpart G.
- Universal waste (batteries, mercury-containing equipment, recalled or cancelled pesticides, and lamps managed under 40 CFR 273).
- Hazardous waste managed as part of an episodic event in compliance with Subpart L of 40 CFR 262.

Generator category is based strictly on the amount of non-acute HW, acute HW, and acute spill residue generated per month. See table below. If the volumes in any one category are surpassed, the generator must move to the next category.

GENERATOR CATEGORIES BASED ON WASTE GENERATED PER CALENDAR MONTH

CATEGORY	Non-Acute HW/month	Acute HW/month	Acute Spill Residues/month
VSQG	≤ 100 kg	≤ 1 kg	≤ 100 kg
SQG	> 100 kg, but < 1000 kg	≤ 1 kg	≤ 100 kg
LQG	≥ 1000 kg	> 1 kg	> 100 kg

CENTRAL ACCUMULATION AREA VS SATELLITE ACCUMULATION AREAS

The new rule defines the term “central accumulation area” only as a matter of convenience. It is helpful for both the regulated community and the implementers to use a common term when referring to locations where generators accumulate hazardous waste other than satellite accumulation areas. EPA finalized the definition in § 260.10 to mean on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either § 262.16 (SQGs) or § 262.17 (LQGs).

Provided they comply with the conditions noted, LQGs may typically accumulate hazardous waste at a CAA without a permit or complying with the interim status standards for up to 90 days, and SQGs may do the same for up to 180 days. (Exceptions apply for F006 waste and SQGs that must ship waste more than 200 miles to TSDF.)

Regarding Satellite Accumulation Areas (SAAs), EPA provided both clarification as well as updates to the regulatory language. A previous memo made allowances for reactive hazardous waste to be stored away from the point of generation, outside of a building. EPA now believes those areas are not at or near the point of generation, and rather than make exceptions for reactive wastes due to their potential for harm, the most protective manner of handling wastes with a greater degree of hazard is to transfer them to a CAA or authorized off-site facility. However, EPA noted that States will retain regulatory oversight.

SAA changes under this new Rule are summarized as follows:

- For acute hazardous waste, generators may now choose between using a maximum gross accumulation volume of 1 quart for liquids or 1 kg for solids.
- SAA containers must now be marked with an indication of the hazard of the contents.

SUMMARY OF IMPORTANT CHANGES UNDER THE NEW RULE

NEW MARKING REQUIREMENTS (§ 262.16(b)(6), §262.17(a)(5))

As discussed above, rather than just marking with the words, “Hazardous Waste”, containers must now be marked with an indication of the hazard that it presents. For example, the hazardous presented by D001 waste could be indicated by marking with the word “ignitable” or through use of a Department of Transportation (DOT) hazard class 3, flammable liquid label.

NEW HAZARDOUS WASTE DETERMINATION RECORDKEEPING REQUIREMENT (§ 262.11)

SQGs and LQGs must maintain records supporting their hazardous waste determinations. See § 262.11(f) for complete details. Records must be:

- Maintained for at least three years from the date that the waste was last sent to treatment, storage, or disposal.

- Comprised of the generator’s knowledge of the waste and support for the generator’s determination. The records must include, but are not limited to, the following types of information:
 - results of any tests, sampling, waste analyses, or other determinations made
 - records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests
 - records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste
 - records which explain the knowledge basis for the generator’s determination

NEW REQUIREMENTS FOR QUICK REFERENCE GUIDES (§ 262.262 (b) and (c))

EPA now requires new LQGs submitting contingency plans to include a Quick Reference Guide that contains information most critical for immediate response to an event. Existing LQGs must include Quick Reference Guides when they update their contingency plans. This applies to areas where hazardous wastes are being accumulated (including points of generation and SAAs). The contents of the Quick Reference Guide (eight elements) are shown below. EPA encourages generators to work with local emergency authorities and others to identify additional information that could be included.

- 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)

NEW RE-NOTIFICATION REGARDING HAZARDOUS WASTE CATEGORIES (§ 262.18(d))

Beginning September 1, 2021 and by September 1st every 4 years thereafter, SQGs are required to re-notify the EPA or authorized State of their generator category using EPA Form 8700-12.

LQGs, must re-notify by March 1st of each even numbered year using EPA form 8700-12. This can be submitted in conjunction with the biennial report required under § 262.41.

NEW PRE-TRANSPORTATION REQUIREMENT (§ 262.32)

All containers of HW less than or equal to 119 gallons must be marked with all applicable HW codes prior to being transported off site.

NEW CLOSURE REQUIREMENTS FOR LQG CAAs (§ 262.17(a)(8))

There are two provision addressed in this rule associated with closure regulations for LQGs

- Closure of waste accumulation units require a notice in the operating record within 30 days after closure identifying the location of the unit within the facility or meet clean closure requirements and notify the EPA or authorized state. If the accumulation unit subsequently reopens, the notice may be removed from the operating record.
- Closure of the facility requires notification to EPA or the authorized state no later than 30 days prior to closing the facility. Then notify within 90 days after closing the facility regarding whether the facility has complied with clean closure requirements or notify that it will close as a landfill.

VSQG CONSOLIDATION PROVISION (§ 262.14(a)(5)(viii)(A), 262.17(f))

The new rule contains provisions to allow VSQGs to ship their waste to a LQG under the control of the same person. "Control" means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to "control" such generators. "Person" as defined in §260.10, means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

Conditions:

- The VSQG marks and labels waste containers with the words "Hazardous Waste" and an indication of the hazards.
- The LQG notifies the EPA or authorized state that it is participating in this activity, identifies and maintains records of the name and address for each VSQGs involved; gives EPA or State a 30-day notice prior to accepting waste from VSQG; keeps records on the amount of waste for each shipment received; manages consolidated waste as LQG hazardous waste including ensuring final treatment or disposal by a RCRA-designated facility (TSD or recycler); and reports waste received in Biennial Report.

BIENNIAL REPORTING (BR) FOR LQGS AND RECYCLING FACILITIES

Previously, there were inconsistencies within the BR regulations versus the BR instructions. This Rule provides clarification. This Rule makes clear that all hazardous waste generated and managed on-site for the entire year must be reported in the BR, even if the generator is only a LQG for a portion of the year. (§262.41).

EPISODIC GENERATION OF HAZARDOUS WASTE

Alternate standards for episodic waste are established in this Rule under § 262 Subpart L. This will be the subject of a separate fact sheet.

POINT OF CONTACT

For questions regarding this Fact Sheet, call 402 697-2620 or 402 697-2624.