
Assessing the Final Hazardous Waste Generator Improvements Rule: What are the Changes, and How Will They Impact Operations?

GEORGIA ENVIRONMENTAL CONFERENCE

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Roadmap

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Background

- U.S. EPA finalized the RCRA Hazardous Waste Generator Improvements Rule.
 - Final Pre-publication version posted October 31, 2016; published in Federal Register on November 28, 2016.
- Final Rule applies to all hazardous waste generators.
 - Regardless of amount generated.
 - Regardless of industry sector.
 - Some industries are more concerned about the final rule than others.
- EPA intended the rule to “improve compliance” by:
 - Addressing regulatory gaps;
 - Providing greater flexibility for generators to manage hazardous waste in a cost-effective manner; and
 - Reorganizing the regulations to make more user-friendly.



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Timing of Rule and Effective Date

Timing of Rule; Why Now? Finalized at very end of Obama Administration.

- Career EPA staff worked on the rule for years; was nearing retirement.
- Otherwise unclear why the Administration prioritized the rule.

Effective Date: May 30, 2017.

- Applicable in Alaska and Iowa on the effective date.
- All other states must adopt those provisions that are more stringent than existing hazardous waste regulations.
- According to EPA, states should adopt provisions that are more stringent than the prior federal regulations by July 1, 2018. However, if the state is required to go through a legislative process to make the changes, the state gets another year.

Legal Challenge

- Challenges permitted in D.C. Circuit within 90 days of publication in Federal Register. Deadline was February 27, 2017.
- Challenged jointly by industry groups (American Chemistry Council and eight others) in the D.C. Circuit on February 24, 2017.
- Petition states: “The Final Rule should be set aside because it is unlawful, arbitrary, capricious, an abuse of discretion, or not otherwise
No Motion for Stay filed.
- Case was held in abeyance on May 31, 2017, in response to an unopposed motion by the EPA. The motion stated that the parties were working together to reach a resolution or to narrow the issues.

“Condition for Exemption” vs. “Independent Requirement”: Concern about Generators Being Considered TSDFs

Final Rule: EPA distinguishes between types of generator requirements.

Most generator requirements are “conditions for exemption.”

Impact: “The primary legal consequence of *not* complying with the condition for exemption is that the generator who accumulates waste on site can be charged with operating a non-exempt storage facility” Pre-Publication Preamble, 51.

- EPA notes that this is not a change to historical requirement; stakeholders disagree.
- EPA notes that enforcement agencies may “elect to cite violations based on the failure to obtain a permit, or on a specific requirement in the storage facility operating regulations, or both.” Pre-publication Preamble, 56.

“Condition for Exemption” vs. “Independent Requirement”

“Condition for Exemption”

- “A requirement that is contingent in nature: it is only necessary to meet the condition if the generator is using it to obtain an optional exemption from other requirements.” Pre-Publication Preamble, 50.

“Independent Requirement”

- “Equivalent to a law that can be broken: it is a statement of a duty that must be met, or else a violation of RCRA or the regulations has occurred that is subject to a penalty.” Pre-Publication Preamble, 49.

Waste Determinations

Historical Requirement: Generators must determine whether solid waste is hazardous waste; LQGs and SQGs must maintain waste determination documentation for at least three years from the date the waste is shipped.

Final Rule:

- Adds that waste determinations must be “accurate.” § 262.11.
- Adds that waste determination must be made at “point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties.” § 262.11(a).
- Elaborates on the types of records that must be maintained to document hazardous waste determinations. § 262.11(f).

Final Rule does not include the controversial EPA proposal to require LQGs and SQGs to maintain waste determination documentation for solid waste determined to be non-hazardous.

VSQG Transport to LQG Under the Control of the Same Person

Historical Requirement: CESQGs (VSQGs under the Final Rule) could not send hazardous waste to another generator, unless the receiving generator had a storage permit or was otherwise a designated facility.

Final Rule: VSQGs may send hazardous waste to an LQG under the control of the same “person,” if various requirements are met by the VSQG and LQG.

VSQG Requirements: must label the containers with the words “Hazardous Waste” and an indication of the content hazards.

Final Rule § 262.14(a)(5)(viii).

VSQG Transport to LQG Under the Control of the Same Person

LQG Requirements (§ 262.17(f)):

1. Notify EPA using Form 8700-12 at least 30 days before receiving first shipment.
2. Identify on the form the names and site addresses for the VSQGs, and a name and business phone number for a contact person at each VSQG.
3. Submit an updated Form 8700-12 within 30 days after a change in the name or site address for the VSQG.
4. Maintain records for three years from the date the hazardous waste was received from the VSQG. These records must identify the name, site address, and contact information for the VSQG and include a description of the hazardous waste received, including the quantity and the date the waste was received.
5. Label waste from a VSQG with the accumulation start date (the date the LQG receives waste from VSQG).
6. Comply with all LQG requirements for the waste received from VSQG.

Episodic Generation

Historical Requirement: Where a CESQG or SQG exceeded allowable accumulation limits, the generator was required to temporarily or permanently adjust its waste management procedures to comply with more stringent requirements of the higher generator status.

Final Rule: A VSQG or SQG may temporarily generate a hazardous waste quantity “that does not normally occur during generator operations,” which would push the generator to a higher generator status, without complying with the more stringent generator status requirements.

Final Rule § 262.231–32.

Episodic Generation

To qualify for Episodic Generation exception, a VSQG/SQG must:

1. Notify EPA no later than 30 days before a planned event, or 72 hours after an unplanned event.
2. Within 60 calendar days from the start of the episodic event, manifest and send its hazardous waste generated from the episodic event to a designated facility.
3. Only one episodic event per year, unless petition is submitted and approved.
4. Obtain an EPA ID number (VSQGs only, since SQGs should already have an ID)
5. Label containers as “Episodic Hazardous Waste,” with the date the episodic event begins, and an indication of the content hazards. Label tanks as “Episodic Hazardous Waste” and with an indication of content hazards, and use an inventory log, monitoring equipment or other records to identify the date that the episodic event begins.
6. Comply with hazardous waste manifest requirements.
7. Maintain for three years documentation, such as dates of episodic event, details of event, transporters and disposal facilities, a description of the episodic event, a description of the types and quantities of hazardous waste generated, a description of how the hazardous waste was managed.
8. Maintain containers and tanks in good condition.

Final Rule § 262.232, 262,233.

Closure

Historical Requirement: LQGs have been required to follow generic closure requirements for accumulation units. Each accumulation type had specific requirements, except containers.

Final Rule:

- Distinguishes between closing accumulation units and a facility.
- Scaled back from more stringent proposed rule with respect to accumulation units.
- Specifically captures containers, and, for the first time, requires container storage areas to be “clean closed” or be subject to more stringent post-closure requirements.

Final Rule § 262.17

Closure: Facilities

Final Rule: When closing a facility, an LQG must do the following:

1. Notify EPA using Form 8700-12 no later than 30 days prior to closing facility.
2. Notify EPA using Form 8700-12 within 90 days after closing facility that it has complied with closure performance standards (§ 262.17(a)(8)(iii) for container, tank, and containment buildings; § 262.17(a)(8)(iv) for drip pads).
 - An LQG may request additional time to clean close, but it must notify EPA using Form 8700-12 within 75 days to request an extension and explain why.
3. If the facility cannot meet the closure performance standards, the LQG must notify EPA using Form 8700-12 that it will close as a landfill, triggering post-closure care and permitting.

Final Rule § 262.17(a)(8)(ii).



Closure: Accumulation Units

Final Rule: When closing an accumulation unit, an LQG may choose either:

1. Within 30 days after closure of a waste accumulation unit, place a notice in the operating record stating that the LQG closed the accumulation unit and indicating the location of the unit within the facility; OR
2. Meet the closure performance standards and notify EPA using the requirements applicable for closing a facility (see prior slide).

Final Rule § 262.17(a)(8)(i).

Satellite Accumulation Areas (SAAs)

Historical Requirement: LQGs and SQGs may accumulate up to 55 gallons of hazardous wastes or 1 quart of acute hazardous waste in containers at or near the point of generation. Must label as “Hazardous Waste” or other words that identify the contents, and must comply with certain container requirements.

Final Rule: Adds several requirements. Examples:

- Allows containers in SAAs to be temporarily vented when necessary.
- Prohibits incompatible wastes in same container.
- Containers must be labeled “Hazardous Waste” and with an indication of the content hazards
- When quantity limit is reached, the excess must be moved within 3 consecutive days; can also convert SAA to Central Accumulation Area.

Final Rule § 262.15.

Labeling: Containers

Historical Requirement: SQG and LQG container labels were required to include “Hazardous Waste” and an accumulation start date.

Final Rule: SQG and LQG container labels must include:

- “Hazardous Waste”
- accumulation start date
- Indication of the content hazards (E.g., hazardous waste characteristic)
- Before transport (not during onsite storage), the container must be marked with an EPA hazardous waste code or nationally recognized electronic system, such as bar coding, that includes waste codes.

Final Rule § 262.16(b)(6) for SQGs; § 262.17(a)(5) for LQGs; § 262.32(c).

Labeling: Tanks

Historical Requirement: SQG and LQG tanks were required to be labeled as “Hazardous Waste.”

Final Rule: SQG and LQG tanks must be labeled as:

- “Hazardous Waste”
- Indication of the content hazards

Final Rule: Documenting accumulation time:

- Tanks using batch process: SQG and LQG must use inventory logs, monitoring equipment, or other records to demonstrate that hazardous waste has been timely emptied (within 180 days for SQGs or 90 days for LQGs).
- Tanks using continuous flow process: SQG and LQG must use inventory logs, monitoring equipment, or other records to demonstrate that the estimated volumes entering the tank daily also timely exit the tank (within 180 days for SQGs or 90 days for LQGs).

Final Rule § 262.16(b)(6) for SQGs; § 262.17(a)(5) for LQGs.

Labeling: Containment Buildings and Drip Pads

Historical Requirement: Containment buildings and drip pads have not required labeling. However, the generator was required to document that hazardous waste was removed at least every 90 days.

Final Rule: Containment buildings must be labeled as:

- “Hazardous Waste”
- indication of the content hazards

Final Rule § 262.16 (b)(5) for SQGs and § 262.17(a)(4) for LQGs.

Final Rule: Drip pads do not require labeling. Final Rule § 262.32(c).

Emergency Planning: Arrangements with Local Responders

Historical Requirement: LQGs and SQGs were required to “attempt to make” arrangements with local emergency responders.

Final Rule:

- Maintained the requirement to “attempt to make” arrangements
- LQGs and SQGs must maintain documentation in the operating record confirming that arrangements were made or that the generator attempted to make such arrangements.
- Added that the LQG and SQG may choose to make arrangements with the LEPC, if the LEPC is the appropriate responder.

Final Rule § 262.16(b)(8)(vi) for SQGs; § 262.256(b) for LQGs.

Emergency Planning: LQG Contingency Plan Submittal

Historical Requirement: LQGs have been required to submit a copy of the facility's Contingency Plan to local emergency responders.

Final Rule: Generators who become LQGs after the Final Rule's effective date (6 months after publication in Federal Register) and certain existing LQGs must provide emergency responders with a "quick reference guide," in addition to full Contingency Plan.

- EPA details specific elements that must be included in the guide (e.g., type/names of hazardous wastes in layman's terms and hazards; estimated maximum of each hazardous waste that may be present).
- Existing LQGs must submit a "quick reference guide" when Contingency Plan is amended.

Final Rule § 262.262(b).



Emergency Planning: LQG Contingency Plan Requirements

Historical Requirement: LQGs have been required to include the home and office phone number, and home address for a facility's emergency coordinator.

Final Rule:

- Replaces home and office phone number with “emergency telephone number.” Eliminates address requirement.
- For generators with an emergency coordinator on duty 24/7/365, the generator may list a position (instead of a specific person) as the emergency coordinator.

Final Rule § 262.261.

50-Foot Setback for Ignitables and Reactives

Historical Requirement: LQG prohibited from placing containers holding ignitable or reactive waste within 50 feet from the site's property line.

Final Rule:

- LQGs may obtain a written approval from the authority having jurisdiction over the local fire code, which allows hazardous waste accumulation to occur within the restricted area.
- The LQG must then maintain a record of the written approval as long as ignitable or reactive hazardous waste is accumulated within 50 feet from the facility's property line.

Final Rule § 262.17(a)(1)(vi).

Re-Notification

Historical Requirement: After obtaining an EPA ID Number, an SQG was not required to re-notify EPA to update its site information or confirm information is accurate.

Final Rule: SQGs must re-notify EPA beginning in 2021, and then again every four years using EPA Form 8700-12.
§ 262.18(d)(1).

- EPA originally proposed to require re-notification every two years.

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