EPA’s Hazardous Waste Generator Improvements Rule

81 Federal Register 85732 (November 28, 2016)

Ethan R. Ware
1441 Main St, Suite 1250, Columbia, SC 29201
(803) 567-4600
eware@williamsmullen.com
“Bummer of a birthmark, Hal.”
HW Generator Rule Overview

Hazardous Waste Generator Improvements Federal Rule

Effective Date: May 30, 2017

- Alaska
- Iowa
- Territories

81 Fed. Reg. 85732 (November 28, 2016)
Delegated States:

July 1, 2019, to Comply
To date: Tennessee

- Not Yet Adopted
- OGC Review
- April 19, 2018
New Terms

“VSQG” = Very Small Quantity Generator

- > 100 Kg/MD
- > 1000 kg onsite

NOTE: Generated, not accumulated
New Term “Central Accumulation Area” (CAA)

- “Onsite”
- “Accumulating in units”
- “Subject to” SQG or LQG

**NOTE:** CAA may be “any location” at the plant/ multiple CAAs.
HWGIR: Overview

THREE CATEGORIES OF CHANGES

Category No. 1. Clarification

Category No. 2. Flexibility

Category No. 3. Risk Assessment
1. Clarification

Clarification: Areas of Impact

A. Hazardous Waste Generators: Contingency Plans

B. Satellite Accumulation Areas (SAA)

C. Frequently Occurring Issues

NOTE: Central Accumulation Areas (CAA)
1. Clarification

A. New Rule: LQG Contingency Plans

- Contingency Plan Executive Summary -- submit to Emergency Planning Committee or other appropriate local agency
- 6 months after effective date -- November 30, 2017

**QUESTION**: Should you submit this before effective date?
1. Clarification

Executive Summary Contents

• Types & amounts of hazardous waste
• Maps of site and surrounding area
• Location of water supply
• Identification of on-site notification systems (i.e. telephones, P.A. system, etc.)
• Emergency Contact
1. Clarification

LQG Contingency Plan
Flexibilities/Clarifications

- Applies ONLY to areas where hazardous waste is being accumulated
- Removes personal information in records
- Revise regulations on placement of equipment to update for modern technology
- Contractors may cleanup releases
- “May submit to [LEPC] as appropriate.”
1. Clarification

B. Revise & Clarify Satellite Accumulation Area (SAA) Rules

- SAA allow generators to accumulate hazardous waste
- At or near point of generation
- Up to 55 gallons
- Containers: Closed, Control, Labeled - Contents
1. Clarification

SAA New Rule:

1. Limits Incompatible Waste:
   - Container prior use determines;
   - Washed containers; and
   - Separate or Protect by “practical means” if “nearby”.
1. Clarification

SAA New Rule:

2. “Closed” at all times: Except -- “Temporary Venting”
   • Necessary for safe operation
   • Proper Operation of Equipment

3. Acute Hazardous Waste – 1 Quart/1Kg
   • Residues of spill count separately
1. Clarification

New Rule:

4. “Three consecutive calendar days”
   • Not business days.

5. Rescind Guidance Memo:
   • D003 Haz. Waste (reactive)
   • Away from point of generation
   • Must be at CAA
1. Clarification

SAA New Rule:

7. “Under Control of an Operator”;
   • “Aware of and attends to operations”
   • “Some measure of controlled access”

NOTE EPA Guidelines:
   • May be > 1 operator
   • “Locked access” may not be required
   • Control over waste required
1. Clarification

C. Frequent Recurring Issues

1. Quantity Calculations:
   - Based on “Calendar Month”
   - Not 30 days
   - Status may change monthly
   - “Generation” ≠ “Accumulation”

**NOTE**: Rejected request to “average”.

[81 Fed. Reg. 85755]
1. Clarification

Addressing Frequent Issues (See § 262.11)

2. **Mixing Hazardous and Non-hazardous Waste:**
   Determining generator category when mixing solid and hazardous waste
   
   • VSQG remains VSQG, unless characteristic
   • Impermissible dilution: 90 day Treatment Rule still applies
   • Hazardous and Non hazardous Waste volumes counted

**NOTE:** LDR applies to 90 day treatment

[81 Fed. Reg. 85756]
1. Clarification

3. “Count Separately”

<table>
<thead>
<tr>
<th>Quantity of acute hazardous waste</th>
<th>Quantity of non-acute hazardous waste generated in a calendar month</th>
<th>Quantity of residues from the cleanup of spilled acute hazardous waste generated in a calendar month</th>
<th>Generator Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt; 1 kg</td>
<td>Any amount</td>
<td>Any amount</td>
<td>LQG</td>
</tr>
<tr>
<td>Any amount</td>
<td>≥ 1,000 kg</td>
<td>Any amount</td>
<td>LQG</td>
</tr>
<tr>
<td>Any amount</td>
<td>Any amount</td>
<td>&gt; 100 kg</td>
<td>LQG</td>
</tr>
<tr>
<td>≤ 1 kg</td>
<td>&gt; 100 kg and &lt; 1,000 kg</td>
<td>≤ 100 kg</td>
<td>SQG</td>
</tr>
<tr>
<td>≤ 1 kg</td>
<td>≤ 100 kg</td>
<td>≤ 100 kg</td>
<td>VSQG</td>
</tr>
</tbody>
</table>

This table is being finalized in the regulations as Table 1 to § 262.13.

[40 CFR 262.13]
1. Clarification

Exceed Category Limit

SQG = Permit Required

VSQG = Manage as SQG or LQG

[81 Fed. Reg. 85741]
1. Clarification

4. Definitions: Revised and Added

- Added “Residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on the land or water” to the list of types of acute hazardous waste to be counted for status

**NOTE:** Not “acute hazardous waste”
5. Determination

Requirements:

If NOT a hazardous waste --

• Don’t need to maintain records of determination

• Dropped from Proposed Rule

NOTE: BMP may warrant records?
1. Clarification

SQGs and LQGs

Hazardous waste determination records on site
“3 years”

NOTE: Not until closure
2. Flexibility

New Rules: Flexible Approach

A. Consolidate wastes from VSQG

B. “Episodic waste”

C. Ignitable/Reactive Wastes
2. Flexibility

A. Consolidation Option:

- Must be VSQG – generate 100 kilograms or less/month
- Transport to LQG
- “Under the control” of the “person” that qualifies as VSQG

NOTE: “Under control” means power to direct policies of VSQG.

[81 Fed. Reg. 85773-74]
2. Flexibility

**VSQG Requirements:**

1. Label it as “VSQG Hazardous Waste”

2. Identify “Hazards of contents”
   - Hazardous Waste characteristics
   - DOT Label -- Classifications
   - OSHA Pictogram
   - NFPA Chemical Hazard Label
2. Flexibility

**LQG Requirements:**

1. Notify state of participation on Site ID Form 8700 and the name of the participating VSQG(s)
   - 30 days prior to receipt
2. Flexibility

2. Manage consolidated waste as LQG haz. waste
   - Labels
   - Date – Date of receipt


4. No maximum amount
2. Flexibility

B. Episodic Exceedence: Relief from Status Change

- Non-routine hazardous waste generation
- Generator status changes as result
2. Flexibility

Rule: No Change to VSQG/SQG

- Conditions Met
- Once a calendar year

NOTE: May petition for second event
2. Flexibility

“Episodic” Includes:

“Planned” Events

• Periodic maintenance
• Clearing out old wastes

“Unplanned” Events

• Spills or leaks
• Discovery of off-spec chemical
2. Flexibility

Seven Requirements: Episodic Events

1. RCRA ID #
   - Existing or New One
   - EPA Form 8600-12

2. Notification
   - Notify EPA of the event either:
     - 30 days before planned event
     - Within 24 hours after unplanned event
   - EPA Form 8700-12

**QUESTION**: Does the facility get relief if file NRC Notification?
2. Flexibility

3. Containment
   • Accumulation must be in compliance with “applicable containment standards”

4. Labeling
   • “Episodic Hazardous Waste”
2. Flexibility

5. Disposal
   • Hazardous Waste Manifest
   • Hazardous Waste Transporter
   • RCRA Designated Facility (TSD or Recycler)

6. Identify Emergency Coordinator

7. Recordkeeping
   • Maintain records for 3 years
2. Flexibility

C. Storage: Ignitable & Reactive Wastes

**Former Rule:** Must be at least 15 meters/50 feet from the property line

**New Rule:** If not achievable (i.e. urban areas), may request “waiver”

- From local fire department or other local emergency response agency
- Must maintain “waiver” agreement on-site
QUESTION: Is flexibility helpful?
3. Safety Requirements: Generators

New Rules: Risk-Based Policies Codified

A. Hazardous Waste Determination

B. Labeling

C. Reporting

D. Closure Requirements
3. Safety - More Stringent

A. Documentation of Hazardous Waste Determinations

Proposed Rule: Document Determination
• 30% errors rate

New Rule: Not Required to Document Determination

QUESTION: Good, right?

…Not so fast
3. Safety - More Stringent

NOTE: New Rule Does Require

1. “Accurate determination”
   • Proper Management

2. At “point of generation”
   • First subject to regulation
3. “Acceptable Knowledge”
   • Relevant
   • “Any source” of information

4. “Applicable test methods”
3. Safety - More Stringent

B. New Rule: Labeling Hazards Required

• Not “AND CONTENTS” (deleted)
• Hazards of the contents
• “Plain English”

NOTE: Tanks, drip pads, containment buildings can keep this information in logs near the accumulation site
3. Safety - More Stringent

C. Reporting – SQGs

- New Rule
- Require SQGs to re-notify every 4 years
- By Sept. 1 of 4th Year
- Electronic Reporting Option
3. Safety – More Stringent

NOTE: Miscellaneous

- No longer list of specific items to be reported - refers to Form
- LQGs must report all hazardous waste generated in a calendar year – even when managed in next calendar year
- LQGs must report hazardous wastes generated throughout the year, even for months they are a SQG
- Recycling facilities must report wastes that are not stored “prior to recycling”

QUESTION: Does EPA have to go through Rulemaking to change the form?
3. Safety – More Stringent

D. New Rule: Closure of LQG

• Close facility as a landfill if not clean close

• Notify EPA or State no later than 30 days prior to closing an accumulation area and within 90 days after closure of a unit or facility

QUESTION: What is “clean closure”? 
3. Safety – More Stringent

PROCEDURE

1. Close Unit
   • Closure requirements; or
   • Notice – Operating record within 30 days

2. Close Facility Notice
   • 30 days before
   • 90 days after: Clean Closure
3. Safety – More Stringent

Clean Closure: Remove Constituents of a Hazardous Waste

- Soils
- Groundwater
- Equipment
- 40 CFR, 261 Appendix VIII

**NOTE:** Less Than Regulatory Levels
3. Safety – More Stringent

**Landfill:**

1. Remove All Wastes
   - Constituents remaining

2. Groundwater
   - 1 up/3 down
   - MCL
   - Quantity = statistical shift

3. Part B Permit
Final Edits

Numerous organizational and editorial revisions:

- Consolidation most basic generator requirements in an expanded 40 CFR part 262
- Conforming Sections
- Updating & Correcting Text
## Hazardous Waste Generator Improvements

### Impacts of Final Rule by Generator Category

<table>
<thead>
<tr>
<th>New Provision</th>
<th>VSQG</th>
<th>SQG</th>
<th>LQG</th>
</tr>
</thead>
<tbody>
<tr>
<td>LQG Consolidation of VSQG wastes</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Episodic Generation</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>50-foot Waiver</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Marking &amp; Labeling</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Marking RCRA Waste Codes</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>SQG Re-notification</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Contingency Plan Quick Reference Guide</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Closure Notification</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Closure as Landfill if can't clean close</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>BR Reporting by Recyclers Who Don't Store*</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>
## Table 1—Crosswalk of Previous Citations to New Citations for Definitions and General Standards

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Previous Citation</th>
<th>New Citation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitions of Generator Categories</td>
<td>§§ 260.10, 261.5 and 262.34</td>
<td>§ 260.10</td>
<td>Previous definition of SQG in § 260.10 was outdated. Generator categories were based on §§ 261.5 and 262.34.</td>
</tr>
<tr>
<td>Hazardous Waste Limits for VSQGs</td>
<td>§ 261.5(a) and (e)</td>
<td>§ 260.10</td>
<td>Included in the new definition of VSQG</td>
</tr>
<tr>
<td>Purpose, Scope, and Applicability</td>
<td>§ 262.10</td>
<td>§ 262.10</td>
<td>Not moved, but expanded significantly</td>
</tr>
<tr>
<td>Hazardous Waste Determination and Recordkeeping</td>
<td>§§ 262.11 and 262.40(c)</td>
<td>§ 262.11</td>
<td>Content in § 262.11 is expanded and § 262.40(c) is incorporated</td>
</tr>
<tr>
<td>Generator Category Determination</td>
<td>§ 261.5(c), (d), and (h)–(j)</td>
<td>§ 262.13</td>
<td>New section that explains how to count hazardous waste to determine generator category</td>
</tr>
<tr>
<td>EPA Identification Numbers</td>
<td>§ 262.12</td>
<td>§ 262.18</td>
<td>Re-notification requirements are also in this section</td>
</tr>
<tr>
<td>Landfill Ban for Liquids</td>
<td>§ 258.28</td>
<td>§ 262.35</td>
<td>For SQGs and LQGs</td>
</tr>
</tbody>
</table>
# New Citations VSQGs

## Table 2—Crosswalk of Previous Citations to New Citations for VSQGs

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Previous Citation</th>
<th>New Citation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>VSQG Definition</td>
<td>§ 261.5(a)</td>
<td>§ 260.10</td>
<td>Moved into new definition of VSQG</td>
</tr>
<tr>
<td>VSQG Mixtures</td>
<td>§ 261.5(h)-(j)</td>
<td>§ 262.13(f)</td>
<td>Moved into Generator category determination</td>
</tr>
<tr>
<td>Conditions for Exemption for a Very Small Quantity Generator</td>
<td>§ 261.5(b), (f), and (g)</td>
<td>§ 262.14</td>
<td>Included in VSQG conditions for exemption</td>
</tr>
<tr>
<td>VSQG Consolidation by LQGs Within the Same Company</td>
<td>N/A</td>
<td>§ 262.14(a)(5)(viii)</td>
<td>New provision</td>
</tr>
<tr>
<td>Landfill Ban for Liquids</td>
<td>§ 258.28</td>
<td>§ 262.14(b)</td>
<td>Specific citation for VSQGs</td>
</tr>
<tr>
<td>Episodic Generation</td>
<td>N/A</td>
<td>Part 262 subpart L</td>
<td>New provision</td>
</tr>
</tbody>
</table>
## Citations for SAAs

### Table 3—Crosswalk of Previous Citations to New Citations for SAAs

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Previous Citation</th>
<th>New Citation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satellite Accumulation Area Provisions</td>
<td>§ 262.34(c)</td>
<td>§ 262.15</td>
<td>Moved from § 262.34</td>
</tr>
<tr>
<td>Selected Part 265 Subpart I Provisions</td>
<td>§ 265.171</td>
<td>§ 262.15(a)(1)</td>
<td>Duplicated from part 265</td>
</tr>
<tr>
<td>Selected Part 265 Subpart I Provisions</td>
<td>§ 265.172</td>
<td>§ 262.15(a)(2)</td>
<td>Duplicated from part 265</td>
</tr>
<tr>
<td>Selected Part 265 Subpart I Provisions</td>
<td>§ 265.173(a)</td>
<td>§ 262.15(a)(4)</td>
<td>Duplicated from part 265</td>
</tr>
</tbody>
</table>
## Citations for SQGs

### Table 4—Crosswalk of Previous Citations to New Citations for SQGs

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Previous Citation</th>
<th>New Citation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of Small Quantity Generator</td>
<td>§ 262.34(d)</td>
<td>§ 260.10</td>
<td>Moved into new definition of SQG</td>
</tr>
<tr>
<td>Accumulation Time Limit</td>
<td>§ 262.34(d)</td>
<td>§ 262.16(b)</td>
<td>Moved</td>
</tr>
<tr>
<td>Accumulation Limit</td>
<td>§ 262.34(d)(1)</td>
<td>§ 262.16(b)(1)</td>
<td>Moved</td>
</tr>
<tr>
<td>Accumulation in Containers</td>
<td>§ 262.34(d)(2) (references part 265 subpart I)</td>
<td>§ 262.16(b)(2)</td>
<td>Duplicated from part 265</td>
</tr>
<tr>
<td>Accumulation in Tanks</td>
<td>§ 262.34(d)(3) (references part 265 subpart J)</td>
<td>§ 262.16(b)(3)</td>
<td>Duplicated from part 265</td>
</tr>
<tr>
<td>Accumulation on Drip Pads</td>
<td>--</td>
<td>§ 262.16(b)(4) (references part 265 subpart W)</td>
<td>No previous regulatory reference for SQGs using drip pads</td>
</tr>
<tr>
<td>Accumulation in Containment</td>
<td>--</td>
<td>§ 262.16(b)(5)</td>
<td>No previous</td>
</tr>
</tbody>
</table>

**Buildings**

- references part 265 subpart DD
- regulatory reference for SQGs using containment buildings

**Marking of Tanks and Containers**

- § 262.34(d)(4) (references § 262.34(a)(2) and (3))
- § 262.16(b)(6)
- Copied from § 262.34 with some changes

**Preparedness and Prevention**

- § 262.34(d)(4) (references part 265 subpart C and § 262.34(d)(5))
- § 262.16(b)(8) and (9)
- Duplicated from part 265 and moved from § 262.34

**Land Disposal Restrictions**

- § 262.34(d)(4) (references part 268)
- § 262.16(b)(7)
- There is still a cross reference to part 268

**Transporting Over 200 Miles**

- § 262.34(e)
- § 262.16(e)
- Moved from § 262.34

**Accumulation Time Limit Extension**

- § 262.34(f)
- § 262.16(d)
- Moved from § 262.34

**Rejected Loads**

- § 262.34(m)
- § 262.16(e)
- Moved from § 262.34

**Episodic Generation**

- N/A
- Part 262 subpart L
- New provision
Table 5—Crosswalk of Previous Citations to New Citations for LQGs

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Previous Citation</th>
<th>New Citation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of Large Quantity Generator</td>
<td>N/A</td>
<td>§ 260.10</td>
<td>New definition</td>
</tr>
<tr>
<td>Accumulation Time Limit</td>
<td>§ 262.34(a)</td>
<td>§ 262.17(a)</td>
<td>Moved from § 262.34</td>
</tr>
<tr>
<td>Accumulation in Containers</td>
<td>§ 262.34(a)(1)(i) references part 265 subparts I, AA, BB, and CC</td>
<td>§ 262.17(a)(1) ((§ 262.17(a)(1) also references part 265 subparts AA, BB, CC)</td>
<td>There is still a cross-reference to part 265 subparts AA, BB, and CC because of the length of these regulations</td>
</tr>
<tr>
<td>Accumulation in Tanks</td>
<td>§ 262.34(a)(1)(ii) references part 265 subparts J, AA, BB, and CC</td>
<td>§ 262.17(a)(2) references part 265 subparts J, AA, BB, and CC</td>
<td>There is still a cross-reference to part 265 subparts J, AA, BB, and CC because of the length of these regulations</td>
</tr>
<tr>
<td>Accumulation on Drip Pads</td>
<td>§ 262.34(a)(1)(iii) ((§ 262.34(a)(1)(iii) also references part 265 subpart W)</td>
<td>§ 262.17(a)(3) ((§ 262.17(a)(3) also references part 265 subpart W)</td>
<td>Accumulation time limit and recordkeeping provisions move to § 262.17 and the extensive technical standards remain in part 265</td>
</tr>
<tr>
<td>Accumulation in Containment Buildings</td>
<td>§ 262.34(a)(1)(iv) ((§ 262.34(a)(1)(iv) also references part 265 subpart DD)</td>
<td>§ 262.17(a)(4) ((§ 262.17(a)(4) also references part 265 subpart DD)</td>
<td>Accumulation time limit, labeling, and recordkeeping provisions move to § 262.17 and the extensive technical standards remain in part 265</td>
</tr>
<tr>
<td>Marking and Labeling</td>
<td>§ 262.34(a)(2) and (3)</td>
<td>§ 262.17(a)(5)</td>
<td>Moved from § 262.34</td>
</tr>
</tbody>
</table>
Citations for LQGs (cont’d)

<table>
<thead>
<tr>
<th>Preparedness, Prevention, and Emergency Procedures</th>
<th>§ 262.34(a)(4) references part 265 subparts C and D</th>
<th>§ 262.17(a)(6) references part 262 subpart M</th>
<th>Cross-references remain but to a new subpart of the generator regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel Training</td>
<td>§ 262.34(a)(4)</td>
<td>§ 262.17(a)(7)</td>
<td>Moved from § 262.34</td>
</tr>
<tr>
<td>Closure</td>
<td>§ 262.34(a)(1)(iv)B) references §§ 265.11 and 265.114. Section 265.111 references other sections in part 265.</td>
<td>§ 262.17(a)(8)</td>
<td>Duplicated from §§ 265.11 and 114 with some revisions</td>
</tr>
<tr>
<td>Land Disposal Restrictions</td>
<td>§ 262.34(a)(4) references applicable parts of part 268</td>
<td>§ 262.17(a)(9)</td>
<td>There is still a cross-reference to part 268</td>
</tr>
<tr>
<td>Extension of Accumulation Times</td>
<td>§ 262.34(b)</td>
<td>§ 262.17(b)</td>
<td>Moved from § 262.34</td>
</tr>
<tr>
<td>Accumulation of F006</td>
<td>§ 262.34(g) through (i)</td>
<td>§ 262.17(c) through (e)</td>
<td>Moved from § 262.34</td>
</tr>
<tr>
<td>Accepting waste from VSQGs under the control of the same person to consolidate before sending to TSDF</td>
<td>N/A</td>
<td>§ 262.17(f)</td>
<td>New provision</td>
</tr>
<tr>
<td>Rejected Loads</td>
<td>§ 262.34(m)</td>
<td>§ 262.17(g)</td>
<td>Moved from § 262.34</td>
</tr>
</tbody>
</table>
Conclusion

1. New Rules Effective May 30, 2017
   South Carolina: Published June 28, 2019

2. States Must Amend Regulations
   - VSQG/SQG

3. Be Careful:
   - Waste determinations
   - SAA Areas
   - Closure Requirements
Conclusion

So Relax…
They’re not too bad after all…
Please note: This presentation contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Individuals with particular needs on specific issues should retain the services of competent counsel.