# Closure and Episodic Generation
# 2016 Hazardous Waste Generator Improvements Rule

ASTSWMO Training Conference
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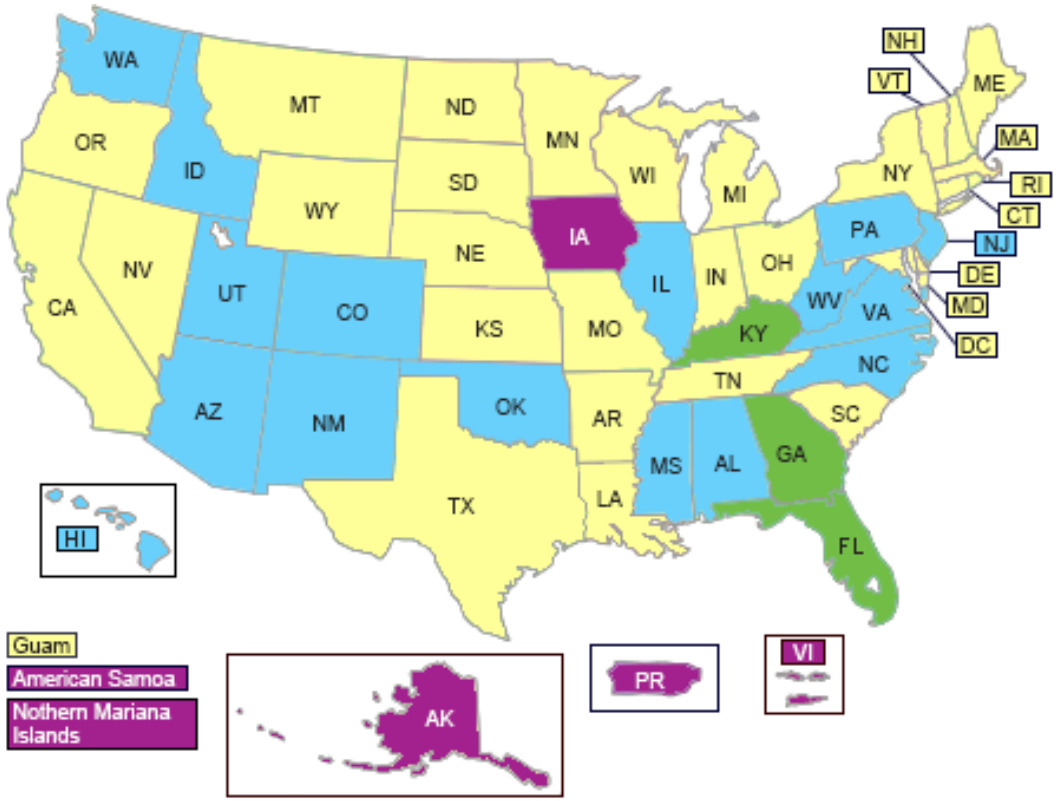
# 2016 Generator Improvements Rule

- Published November 28, 2016 (81 FR 85732)
- Federal Effective Date – 6 months from publication—May 30, 2017

- Main New or Revised Provisions:
  - VSQG consolidation
  - Episodic generation
  - SQG re-notification
  - SAAs subject to incompatibility and emergency preparedness & prevention requirements
  - Labeling: identifying hazards of wastes being accumulated on labels and RCRA waste codes added prior to shipment
  - Biennial reporting for whole year, not just months the generator is an LQG
  - Biennial reporting for recyclers who don't store prior to recycling
  - Quick Reference guide for contingency plans
  - Notification of closure
  - Closure as a landfill for LQGs accumulating hazardous wastes in containers that cannot meet closure performance standards

# Where the HW Generator Improvements Rule is in Effect



# Closure Changes

- Consolidates closure standards in one place
- Requires LQGs to notify EPA or the implementing state when closing a facility and/or accumulation unit
- Requires LQGs accumulating hazardous wastes in containers to close as a landfill if unable to meet closure performance standards (i.e., they can't clean close)
- Clarifies that closure does not apply to SAAs

# Why did we make changes?

- Previous regulations confusing and contradictory
- Revisions consolidate and streamline regulations to improve user-friendliness
- Also, revisions close important gaps:
  - Prior to this rule, EPA and most states had no idea when an LQG closed its facility or waste accumulation unit
  - LQGs accumulating hazardous wastes in tanks, containment buildings and drip pads must close as landfill (or equivalent) if unable to meet closure performance standards
  - LQGs accumulating hazardous wastes in containers had no such requirements
  - Yet, numerous damage cases found where LQGs accumulating hazardous wastes in containers abandoned their facility leaving EPA and/or states to clean up as Superfund removal action – often costing millions

# Closure Notification

- Requires LQGs to notify EPA or state when closing a facility via Site ID form
  - 30 days ***prior*** to closing facility and
  - 90 days ***after*** closing facility to certify that they met closure performance standards
  - Extension requests must be submitted within 75 days after closing

- Provides option of LQG closing waste accumulation unit to:
  - Place a notice in operating record within 30 days ***after*** closing waste accumulation unit and address closure when facility closes (notice can be removed from the operating record if unit going back into service), OR
  - Notify EPA or state they have met closure performance standards for their waste accumulation units
    - 90 days ***after*** closure via Site ID form 8700-12

(§ 262.17(a)(8))

# Closure Standards

- Consolidate performance standards found in § 265.111 and §265.114 into LQG section (§262.17(a)(8)) and clarify that these units are subject to clean closure standards
- LQGs for containers, tanks, and containment buildings must:
  1. Minimize and control post-closure care releases of hazardous waste and constituents to the environment
  2. Remove or decontaminate all contaminated structures, equipment, and soils
  3. Manage any hazardous waste generated in the process of performing closure according to Subtitle C
  4. If the LQG cannot clean close, then they must close as a landfill and meet the requirements of Subparts G and H of 40 CFR 265
- Note: LQG drip pad operators are subject to 1 and 3 above and 265 Subpart W in lieu of 40 CFR 265 Subparts G and H

# Close Look at the Regulations

- In the old federal requirements, the LQG found closure requirements throughout the hazardous waste regulations.
  - 262.34(a)(1)(ii) required that tanks storing hazardous waste comply with part 265 subpart J EXCEPT 265.197(c) and 265.200.
    - This means that tanks had to either remove and decontaminate all waste residues, components, soil, equipment and manage them as hazardous waste (265.197(a)) OR close as a landfill (265.197(b)).
  - 262.34(a)(1)(iii) required that drip pads holding hazardous waste comply with part 265 subpart W
    - In subpart W, 265.445 describes closure requirements for waste and any surrounding contamination as well as requirements for post-closure care if they cannot meet liner requirements
  - 262.34(a)(1)(iv) required that containment buildings storing hazardous waste comply with 265.111 and 265.114, which mandate closure performance standards and and disposal or decontamination of equipment, structures, and soils, as well as post-closure care for a landfill.
- This requirement did not exist for containers, though leaving contamination in place would have been an illegal release. The Generator Rule amended the rules to make requirements for containers parallel to other hazardous waste units.

# FAQs on Closure Notification

What does an LQG do when closing a central accumulation area, but not closing all hazardous waste units?

- The LQG must do one of the following two options:
  - Place a notice in the operating record within 30 days after closing the waste accumulation unit that identifies the unit's location within the facility.
  - Applicable closure performance standards can then be addressed later when facility closes.
  - If necessary, the notice can be removed from the operating record at any point before closing.

OR

  - Notify the regional EPA Administrator no later than 90 days after closing the unit.
  - The large quantity generator should have met the closure performance standards in 40 CFR 262.17(a)(8)(iii) on or before the date they submit the 90-day notification.
  - If a large quantity generator needs more than 90 days to comply with the closure performance standards, they must submit an extension request no later than 75 days after closure.

# FAQs on Closure Notification

If a generator's central accumulation are has no hazardous waste in it currently, does that mean it is "closed"?

- No. If there is no hazardous waste currently in a central accumulation area, that does not mean that it closed for the purposes of putting a notice in the operating record or notifying the state or EPA.
- A closed central accumulation area is an area from which the generator has removed all hazardous waste and that it does not intend to use again as a central accumulation area in the future.

# FAQs on Closure Notification

If a generator was a large quantity generator for all or most of its existence except the last few months prior to closure, does it have to comply with the closure requirements?

- EPA recommends that a generator that has had fluctuating generator categories work with its state to determine whether it must comply with the closure requirements.
- Technically, if a generator has ever been a large quantity generator during its lifetime, the closure provisions apply.
  - However, EPA or the state will make a case-by-case determination.
  - For example, a facility that was a large quantity generator for 20 years and then dropped down to a small quantity generator for six months before closing, would most likely be subject to the closure requirements.
  - Conversely, a facility that was a small quantity generator for twenty years but was a large quantity generator for the last six months before closure, may not have to undergo closure.

# Closure: Comparison of New vs. Old Requirements

| NEW | OLD |
|---|---|
| **§ 262.17 (a)** (8)<br>(i) *Notification for closure of a waste accumulation unit.*<br>(ii) *Notification for closure of the facility.* | |
| (iii) *Closure performance standards for containers, tank systems, and containment building waste accumulation units.* | |
| (A) At closure, the generator must close the waste accumulation unit or facility in a manner that: | **§ 265.111** The owner or operator must close the facility in a manner that: |
| *(1)* Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, | (a) Minimizes the need for further maintenance, and<br>(b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and<br>(c) Complies with the closure requirements of this subpart, including, but not limited to, the requirements of §§265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, and 265.1102. |

# Closure: Comparison of New vs. Old Requirements

| NEW | OLD |
| --- | --- |
| *(2)* Removes or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste, unless § 261.3(d) of this chapter applies.<br><br>*(3)* Any hazardous waste generated in the process of closing either the generator's facility or unit(s) accumulating hazardous waste must be managed in accordance with all applicable standards of parts 262, 263, 265 and 268 of this chapter, including removing any hazardous waste contained in these units within 90 days of generating it and managing these wastes in a RCRA Subtitle C hazardous waste permitted treatment, storage and disposal facility or interim status facility. | **§265.114 Disposal or decontamination of equipment, structures and soils.**<br>During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in §§265.197, 265.228, 265.258, 265.280, or 265.310. **By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of part 262 of this chapter.** |

# Closure: Comparison of New vs. Old Requirements

| NEW | OLD |
| --- | --- |
| *(4)* If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in paragraph (a)(8)(ii)(A)(*2*) of this section, then the waste accumulation unit is considered to be a landfill and the generator must close the waste accumulation unit and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 265.310 of this chapter). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator must meet all of the requirements for landfills specified in subparts G and H of part 265 of this chapter.<br>(iv) *Closure performance standards for drip pad waste accumulation units.*<br>At closure, the generator must comply with the closure requirements of paragraphs (a)(8)(ii) and (a)(8)(iii)(A)(*1*) and (*3*) of this section, and § 265.445(a) and (b) of this chapter.<br>(v) The closure requirements of paragraph (a)(8) of this section do not apply to satellite accumulation areas. | **§ 265.197 (b)** If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (a) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§265.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in subparts G and H of this part.<br><br>**Comparable text found for containment buildings.** |

# Episodic Generation Overview

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 Overview

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

# Episodic Generation Overview

- 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

# Questions?

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# Future Resources

- What new resources would you like to see?
- What materials on our website do you use the most and want us to update with new terms and citations?
- Email us your suggestions!

# Points of Contact


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