

July 21, 2004

OSWER Docket
EPA Docket Center (5305T)
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Attention: Docket ID No. RCRA-2003-0014

Dear Sir or Madam:

The RCRA Program Operations Task Force of the Hazardous Waste Subcommittee of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) offers the following comments for EPA's consideration on the Hazardous Waste Generator Program Evaluation. The task force is comprised of a dozen State hazardous waste program managers with expertise in this area of regulation. These comments have not been reviewed or approved by the ASTSWMO Board of Directors due to timing issues, and therefore solely represent the views of the Task Force. Individual States may also provide comments based on their own unique perspectives.

General Comments:

Overall, the Hazardous Waste Generator Requirements have been effective in reducing the risks to human health and the environment from the improper management and disposal of hazardous waste.

However, the piecemeal development of regulations through the years has resulted in a confusing set of rules that is difficult for generators to follow. These rules would benefit from reorganization and further clarification. In particular, all of the generator requirements could be collected into 40 CFR part 262 and organized in a manner which is easier to use. See Attachment I for specifics on how this might be accomplished.

Also, in many cases the RCRA rules contain citations to other regulations which are erroneous or which are obsolete. Examples include references to various U. S. Department of Transportation (DOT) requirements pertaining to oxidizers and explosives. This program evaluation would be an excellent time to identify errors in 40 CFR parts 261 and 262 and eliminate them. (The Task Force has begun an effort to identify such errors and hopes to have a more definitive listing for EPA in the future.)



Any flexibility offered to generators should not discourage waste minimization but encourage it! This program, in its current form, may need revisions but it does cause generators to think about not generating the waste in the first place and/or to use materials that are less toxic. For example, when the wastewater reporting requirement was dropped from the Biennial Report a number of years ago, pressure was removed from facilities to minimize hazardous waste that they mixed in wastewater. Before this requirement was removed, States saw a number of large quantity generators make great strides to reduce hazardous waste being mixed in wastewater because they didn't want to be one of the States' top generators of hazardous waste listed in the Biennial Report for general public scrutiny.

Specific Comments:

1. The absence of the hazardous waste numbers and other pertinent information from manifests makes tracking of specific types of wastes from cradle to grave difficult. This is especially true when wastes are shipped to an intermediary treatment facility located in another state, before final treatment, and/or disposal. For example, DOT regulations require hazardous waste numbers on manifests. However, many of the applicable hazardous waste numbers and waste codes are often missing from the manifest forms.
2. There should be some type of renotification requirement in 40 CFR 262.12 for generators when their generator status changes (i.e., when they cease operating, change location, etc.) This is one way to improve the accuracy of our data bases used to identify handlers and to provide public information. Currently, there is no such requirement which has resulted in outdated, incorrect data.
3. EPA needs to clarify that the option for classification of hazardous waste based upon generator knowledge does not apply to facilities that receive the waste from other generators.
4. Regarding the U and P lists, States were under the impression that EPA was going to finish rulemaking for these lists for mixtures. We disagree with use of the "sole active ingredient" rationale to consider these materials and listed wastes - particularly when it comes to the cleanup of mixtures.
5. Currently, a generator has limited liability under RCRA if the wastes that they generate and manage are improperly managed or disposed of by a subsequent TSD facility that received their hazardous waste. Increasing generators' liability for subsequent mismanagement of their wastes would help assure that the "cradle-to-grave" principle is more fully practiced and that facilities' wastes meet the LDR requirements
6. The Task Force notes that Performance Track facilities (with environmental management systems) typically go beyond the rules and regulations of RCRA and therefore would not seem to benefit from exclusions from the RCRA regulations.

7. Once a container is filled, sealed, and labeled it should always be subject to certain rules. Once waste is containerized and the container is marked/labeled by the generator, the container should never be opened for commingling of different waste streams or disturbed until it is emptied in the treatment facility for treatment. Commingling of wastes should not be allowed at transfer facilities, but only in facilities permitted or authorized for such activity.
8. A set of minimum storage distances from property lines needs to be developed and universally applied. The potential danger represented by the container of hazardous waste is not diminished by who has possession of the waste. Therefore, if it is prudent to keep containers 50 feet from a property line in a storage facility, it should always be kept 50 feet from the property line, regardless whether the storage site is a satellite accumulation area, a generator storage area, a transfer facility, or a TSD facility.
9. Current regulations presume that the waste can be held without a permit for a specified period of time. There are certain staging activities that cannot always be confined to permitted areas, and the regulations need to address those activities and make sure they still occur under rules of prudent management, if not covered under the permit.
10. Certain current rules are vague and should be clarified as to meaning as follows:
 - **Generator Treatment:** Rule 262.34 should state explicitly whether or not generators are allowed to treat in containers. If so, it should be clear in the rule that EPA and/or the States have the authority to place conditions on or develop standards for such treatment.
 - **Satellite Accumulation:** For clarity,
 - ▶ Rule 40CFR262.34(c) should be headed explicitly as the "Satellite Accumulation In Containers" rule.
 - ▶ The requirement that waste must be accumulated "at or near" the point of generation in 262.34(c)(1) needs to be further explained. A great deal of confusion exists now over what the term "near" means. A common interpretation, based on the fact that the area must be "under the control of the operator," is that the satellite accumulation point must be within view of the operator. For flammable wastes, this often either conflicts with fire codes because the flammable waste is required to be kept close to possible sources of ignition or subjects the generator to the additional expense of purchasing fire proof cabinets when the satellite accumulation point could easily be moved to an area away from the ignition sources and controlled by other means (i.e., a locking bung on a drum or cap on a tank).
 - ▶ Rule 262.34(d) should state explicitly that SQGs can use the satellite accumulation rules of 262.34(c).

- **SQG Recordkeeping:**
 - ▶ Rule 262.34(d)(5)(iii) requires SQGs to ensure that all employees with positions relevant to HW operations are trained in waste handling and emergency response. SQGs are not required to document the training.
 - ▶ SQGs are not currently required to keep records of Exception Reports. Rule 262.44(a) exempts SQGs from complying with Rule 262.40(b) which requires generators to keep Exception Reports for 3 years. Rule 262.44(b) requires SQGs to comply with Rule 262.42(b), exception reporting, but there is no requirement in that rule to maintain records of Exception Reports.

- **Recordkeeping and Inspections:**
 - ▶ The requirements for SQGs [Rule 262.34(d)(2)] and LQGs [Rule 262.34(a)(1)(i)] reference 40 CFR Part 265, Subpart I, which requires generators to perform inspections of container storage areas (Rule 265.174). Rule 265.174 does not currently require a generator to keep records of inspections of container storage areas.
 - ▶ The requirements for SQGs [Rule 262.34(d)(3)] reference Rule 265.201, which requires SQGs to inspect tank systems [Rule 265.201(c)]. Rule 265.201(c) does not require these inspections to be documented.

- **Recordkeeping and Arrangements With Local Authorities:**
 - ▶ The requirements for SQGs [Rule 262.34(d)(4)] and LQGs [Rule 262.34(a)(4)] reference 40 CFR Part 265, Subpart C, which requires that the generator make preparedness and prevention arrangements with local authorities (Rule 265.37). However, Rule 265.37 does not require the generator to document arrangements with local authorities, only rejections of such arrangements by the local authorities. Both arrangements should be required to document by some means (i.e., a certified letter requesting such arrangements, etc.).
 - ▶ The requirements for LQGs [Rule 262.34(a)(4)] reference 40 CFR Part 265, Subpart D, requires the generator to provide copies of the contingency plan to local authorities [Rule 265.53(c)]. However, Rule 265.53(b) does not require the generator to document provision of the contingency plan to local authorities. LQGs should be required to document provision of the contingency plan by some means (i.e., a certified letter accompanying the plan, response by local authorities)

We appreciate the opportunity to provide these comments to EPA on potential revisions being considered regarding this important hazardous waste generator initiative. Please contact me at 512-239-2320 if you have any questions or need further clarification.

Sincerely,

A handwritten signature in cursive script that reads "Susan S. Ferguson". The signature is written in black ink and is positioned above the typed name.

Susan S. Ferguson, Chairman
RCRA Program Operations Task Force
ASTSWMO

cc: ASTSWMO Hazardous Waste Subcommittee
Matt Hale, EPA/OSW
Jim O'Leary, EPA/OSW

Attachment I

Suggested Reorganization and Reformatting of the Generator Requirements for Improved Understanding and Clarity

Reorganize for clarity and ease of use:

- Move 40 CFR 261.5(c) and (d), the rules for calculating the quantity of HW generated per month to 40 CFR part 262.
- Move 40 CFR 261.5(a), (b), (e), (f), (g), the requirements for CESQGs, into 40 CFR part 262 under its own subheading.
- Move 40 CFR 262.34(d) - (f), the requirements for SQGs, into its own subheading in 40 CFR part 262.

For clarity and ease of use, the requirements should be reformatted as follows:

Part 262

Subpart A - General:

- Applicability – currently 262.10
- Hazardous Waste Determination – currently 262.11
- Determining Generator Status – currently 261.5(c) & (d)

Subpart B - CESQG Rules

Subpart C - SQG Rules

- EPA ID Numbers - currently 262.12
- Manifests – currently 262 Subpart B
- Accumulation at the Generator Facility – currently 262.34(d) and (e). In addition, this section should be rewritten into the same format used for large quantity generators (Rules 262.34(a), (b), and (c))
- Quantity Limitation – currently 262.34(d)(1)
- Accumulation in Containers – currently 262.34(d)(2)
- Accumulation in Tanks – currently 262.34(d)(3) and 265.20
- Accumulation on Drip Pads – unclear whether 40 CFR part 265, subpart W is an option for SQGs
- Labeling – currently 262.34(d)(4)
- Satellite Accumulation – currently unclear whether Rule 262.34(c) is an option for SQGs
- Consequences of Exceeding Time Limit and Requesting Accumulation Time Extensions – currently 262.34(f)
- Pre-Transport Requirements – currently 262.30 - .33
- Preparedness and Prevention – currently 262.34(d)(5)(i) and (ii)
- Emergency Response - currently 262.34(d)(5)(iv)
- Personnel Training - currently 262.34(d)(5)(iii)

- Recordkeeping - General Recordkeeping – currently 262.44(a),
 - ▶ Exception Reports - currently 262.42
 - ▶ Additional Reporting – currently 262.43

Subpart D - LQG Rules

- EPA ID Numbers - currently 262.12
- Manifests – currently 40 CFR Part 262, Subpart B
- Accumulation at the Generator Facility – currently 262.34(a), (b), (c)
 - ▶ Accumulation in Containers – currently 262.34(a)(1)(i)
 - ▶ Accumulation in Tanks – currently 262.34(a)(1)(ii)
 - ▶ Accumulation on Drip Pads – currently 262.34(a)(1)(iii)
 - ▶ Accumulation in Containment Buildings – currently 262.34(a)(1)(iv)
- Labeling – currently 262.34(a)(2) and (3)
- Satellite Accumulation – currently 262.34(c)
- Consequences of Exceeding Time Limit and Requesting Accumulation Time Extensions – currently 262.34(b)
- Pre-Transport Requirements – currently 262.30 - .33
- Preparedness and Prevention – currently 262.34(a)(4)
- Contingency Plan – currently 262.34(a)(4)
- Emergency Response – currently 262.34(d)(5)
- Personnel Training – currently 262.34(a)(4)
- Recordkeeping and Reporting:
 - ▶ General Recordkeeping - currently 262.40
 - ▶ Biennial Reporting – currently 262.41
 - ▶ Special Requirements for Generators of F006 – currently 262.34(g) and (h)

Subpart E and Above - remain unchanged.