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December 23, 2015

RCRA Docket
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Attention: Docket ID No. EPA-HQ-RCRA-2012-0121

Dear Sir/Madam:

The Compliance Monitoring and Enforcement Task Force within the Hazardous Waste Subcommittee of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) appreciates the opportunity to provide comments on the proposed rule, Hazardous Waste Generator Improvements, published in the Federal Register on September 25, 2015 (80 FR 57917). These comments have not been reviewed or adopted by the ASTSWMO Board of Directors. In addition, individual State or Territorial hazardous waste programs may also provide comments based on their own State perspectives and experiences.

ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes State waste program experts in the management and regulation of solid and hazardous waste.

The attached comments reflect the input of members of the Compliance Monitoring and Enforcement Task Force, as well as comments shared by State hazardous waste programs outside of the Task Force membership. The term "States" as used in these comments refers to the States that have provided input to the Task Force. Our submittal also presents the diversity of the State comments received, noting where States are in agreement, and where views may differ or were expressed by a certain number of States.

We appreciate the opportunity to provide comments on this important topic. If you have any questions about these comments, please contact Penny Wilson (AR), Chair of the Compliance Monitoring and Enforcement Task Force, at wilson@adeq.state.ar.us or 501-682-0868, or Kerry Callahan, ASTSWMO staff, at kerryc@astswmo.org or 202-640-1062.

Sincerely,

Tammie J. Hynum (AR)
Chair, ASTSWMO Hazardous Waste Subcommittee

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ATTACHMENT

Specific Comments Submitted by the Compliance Monitoring and Enforcement Task Force of the ASTSWMO Hazardous Waste Subcommittee regarding the

Proposed Hazardous Waste Generator Improvements Rule
80 FR 57917
September 25, 2015

Docket ID No. EPA-HQ-RCRA-2012-0121

General Comments

Generator categories should be based on pounds of hazardous waste generated and not kilograms.

While the States recognize EPA's desire to increase consistency with regard to terminology, several States recommend that EPA consider the benefits in relation to the potentially negative effects that may result from a name change within a regulated community which is already familiar with the term "Conditionally Exempt Small Quantity Generator (CESQG)." Additionally, the change will require considerable work within State regulatory programs to modify program materials, such as websites, forms, guidance documents, etc., which currently reference CESQGs. While this may not be a significant concern for States which adopt EPA's regulations by reference, for those that do not, the resources that would be required to make such revisions should not be overlooked.

The States believe additional clarification is needed throughout the proposed rule before being finalized.

Specific Comments By Section

Section V. (Page 57922): The conditional exemption available to farmers and CESQGs is outlined in Section V.B.3 and includes a reference to part 262 subpart G (for Farmers); however, the references to the CESQG regulations were not included. One State recommends including references to §261.5(f)(3) and §261.5(g)(3) for CESQGs.

Section V.B.3 (Page 57923): Making a correct hazardous waste determination is a condition for exemption for CESQGs but an independent requirement for Small Quantity Generators (SQGs) and Large Quantity Generators (LQGs). One State believes that hazardous waste determinations should be an independent requirement for all generators.

Section V. Table 1 (Page 57923): Table 1 (Conditions for Exemption) is useful and should be included in the regulations. One State suggests EPA remove all of the "…" from the table – they make reading it less clear. One State suggests horizontal lines be inserted between rows for clarity.

Section VI.A (Page 57925): One State agrees that the definition at §260.10 needed updating to include Very Small Quantity Generator (VSQG)/CESQG and LQG.

Section VI.A (Page 57925): One State commented if the rule is finalized as proposed, numerous data management changes will be needed: Biennial Report (instructions and forms); RCRAInfo database; Form 8700-12 Notification of RCRA Subtitle C Activity (instructions and form); Form 8700-23 RCRA Hazardous Waste Part A Permit Application (instructions and form); all database sites that reference RCRA generator categories (ECHO, Envirofacts, etc.); State hazardous waste databases; State forms and instructions; State websites, etc.

Section VI.A. (Page 57925): One State is concerned with how storage limits affect generator categories. Although the preamble clearly states that generator category is based solely on the amount of waste generated and is not affected by accumulation limits, "EPA acknowledges that accumulation limits may trigger different generator regulations" (p. 57925). If a generator generates just under 1,000 kg of waste monthly and stores this waste for up to 270 days (being over 200 miles from a Treatment, Storage and Disposal Facility (TSDF)), it could easily accumulate more than 6,000 kg of waste. At this point, the generator must be subject to either LQG requirements (and how is this different from *being* a LQG?) or part 270 permitting requirements. If accumulation of over 6,000 kg "triggers" LQG regulations to apply to this generator, is that somehow different from saying the generator *is* a LQG?

Section VI.A (Page 57925): The Very Small Quantity Generator (VSQG) category in particular will replace the current "conditionally exempt small quantity generator" (CESQG) category and specify a definition for the new term. This definition is written in a way that a VSQG must generate less than or equal to 100 kilograms of non-acute hazardous waste **plus** less than or equal to 1 kilogram of acute hazardous waste **plus** less than or equal to 100 kilograms of any residues resulting from the cleanup of a spill of acute hazardous waste. According to this definition, the generator would have to generate all three (3) wastes included above to be considered a VSQG. One State believes this should be revised to be an "or" situation. Some States would also recommend that EPA consider establishing an accumulation time limit that it determines reasonable for CESQGs in addition to the current weight limit. It has been the States' experience with such low generation rates that it would be decades before they approach the 1,000 kilogram limit currently established. Passage of such a long amount of time and subsequent changes in on-site conditions could potentially lead to the mismanagement of hazardous waste accumulated at CESQGs. Establishing an accumulation time limit would also be beneficial to the regulated community, reducing the risk for potential non-compliance.

Small Quantity Generator (SQG) definition: The way this is written a SQG must generate greater than 100 kilograms and less than 1000 kilograms of non-acute hazardous **plus** less than or equal to 1 kilogram of acute hazardous waste **plus** less than or equal to 100 kilograms of residues from the cleanup of a spill of acute hazardous waste. According to this definition, the generator would have to generate all three (3) wastes included above to be considered a SQG. One State believes this should be revised to be an "or" situation.

Section VI.A (Page 57926): One State was of the opinion the way this is written a CESQG must generate ≤ 1 kilogram of acute hazardous waste **plus** ≤ 100 kilograms of hazardous waste **plus** ≤ 100 kilograms of residues from the cleanup of a spill of acute hazardous waste in order to

be classified as a CESQG. According to this definition, the generator would have to generate all three in order to be considered a CESQG. What would be the classification if they only generated ≤100 kilograms of non-acute hazardous waste? EPA should consider revising this as follows: "If a generator generates ≤ 100 kilograms of non-acute hazardous waste, **or** ≤ 1 kilogram of acute hazardous waste, **or** ≤ 100 kilograms of residues from the cleanup of a spill of acute hazardous waste, then the generator is a CESQG for that calendar month."

Section VI.A (Page 57926): Table 2 outlines generator categories based on the amount of waste they generate in a calendar month. Scenarios 1-3 for LQGs are confusing due to the "any amount" designation. An easier to understand format is provided on EPA's website at the following link: http://www2.epa.gov/hwgenerators/hazardous-waste-generator-regulatory-summary. A couple of States agreed Table 2 is useful and should be included in the actual published rule and regulation. One suggestion was to add a caption explaining how to read the table. Remove all of the "…" from the table as they make reading it less clear. Instead, draw horizontal lines between rows or leave blank if each entry remains a single row.

Section VI.B (Page 57926): EPA states the "inconsistency in terminology has caused some confusion throughout the regulated community." Many States do not necessarily agree there has been confusion throughout the regulated community. Some States support including the definition, but would rather keep the designation as CESQG because the ramifications of the change is enormous. Since 1986 the regulated community has been educated using the term CESQG, with very little confusion. With this change, trying to re-educate the regulated community will take valuable staff time, and most States don't have the luxury of taking staff from other duties to conduct outreach. In addition, all State publications and web pages will have to be revised, which again will take time and expend dwindling funds. Additionally, EPA will also have to change their publications and web pages in a timely manner, to reflect this change and avoid confusion.

Some States support the change from CESQG to VSQG.

Section VI.C (Page 57927): EPA states "we are proposing to define the term 'central accumulation area' only as a matter of convenience." Defining "central accumulation area" implies a generator will have only one area at their facility for accumulating hazardous waste. This is somewhat misleading since in fact and in practice, many facilities have more than one area where hazardous wastes are accumulated for <90 or < 180 days. This is usually done when the area cannot be managed as a satellite accumulation area (SAA). Some States do not believe defining "central accumulation area" adds to the protection of human health or the environment. A couple of States consider the definition of "central accumulation area" acceptable.

Additionally, one State noted the text in this section is contradictory. EPA first states "the use of the word 'central' does not limit a generator to one area. Then EPA states "the use of the word 'central' does not indicate that the generator must establish *the* central accumulation area in a location that is centrally located within the site" (*emphasis added*).

One State believes the term "central accumulation area" is misleading and confusing. If it is to be defined as "any on-site hazardous waste accumulation area", the term "Hazardous Waste

Accumulation Area" may be more appropriate. By defining a "central accumulation area" as "any on-site hazardous waste accumulation area" may lead to some confusion in regards to SAAs.

For consistency, a couple of States suggest that the definition of "satellite accumulation area" be added to §260.10 as is proposed for central accumulation area.

Section VII.A (Page 57928): States support the proposal to revise the existing regulations to indicate that a generator can only have one generator category in a calendar month.

Section VII.B (Page 57929): One State believes EPA's proposal attempts to clarify how hazardous waste regulations apply to situations where both acute and non-acute hazardous waste are generated in the same calendar month and where hazardous wastes are mixed with non-hazardous wastes. One State is generally supportive of the clarifying language. However, while the proposed language for CESQGs in particular improves the understanding of the regulation regarding how mixtures of non-hazardous waste and hazardous waste would affect generator categories, a recommendation is to further clarify with regard to mixtures of listed hazardous waste and non-hazardous waste.

"Mixing" non-hazardous and hazardous waste is not defined. Under the current wording it appears a CESQG could mix any hazardous waste with a non-hazardous waste, and as long as it is not a characteristically hazardous waste the CESQG can dispose of it as a non-hazardous waste. Some States are concerned because it may allow for CESQGs to take advantage of this rule and dilute their hazardous wastes in order to make them pass as a non-hazardous waste. A couple of States suggested EPA include a reference to Land Disposal Restrictions concerning the dilution of hazardous waste.

The last paragraph in column 1 provides a CESQG characteristic waste mixing scenario. One State suggested a second scenario is needed for a situation where either listed or acutely hazardous waste is mixed with enough waste to bump the generator into a higher category. Once mixed, the generator would need to complete a full waste determination on the resulting mixture, and not solely rely on the characteristics of the mixed waste in order to be in compliance with §262.11.

Section VII.B (Page 57929): The proposal to add a mixing provision for SQGs would allow a small quantity generator to mix its hazardous waste with non-hazardous waste and remain eligible for the conditional exemption applicable to a small quantity generator. One State believes the two scenarios that are provided are confusing, because there may be instances when the quantity levels exceed SQG limits without bumping up their generator status. A much easier to understand scenario is presented in the LQG section located further down in Column 3 on page 57929. The State suggests it would be even clearer if CESQGs, SQGs, and LQGs all were to be held to the same standard as opposed to having different regulations applicable to each individual category. As stated previously, a couple of States suggested the regulations should be written clearly that the land disposal restrictions may still apply even after the waste is rendered non-hazardous.

Section VII.B (Page 57930): EPA requests comment on whether the proposed language for CESQGs and SQGs improves the understanding of the regulations regarding how mixtures of non-hazardous waste would affect the generator category for CESQG and SQGs. Some States generally believe the reorganization and streamlining of the generator regulations will benefit regulators and the regulated community alike. These States also believe that the revisions will help improve generator compliance and reduce uncertainty by placing all of the requirements for a particular type of generator within the same section.

EPA additionally requests comment on whether the proposed language for LQGs assists LQGs in more easily finding the applicable mixture regulations. Most States believe referencing the mixing regulations within §262.17(f) does appear like it would assist LQGs in more easily finding the applicable mixture regulations.

Section VII.C (Page 57930): The first full paragraph describes a situation where a CESQG could transfer their waste to a LQG under the control of the same person. EPA goes further by stating that the LQG would likely be familiar with the type of hazardous waste generated by the CESQG. While that may be likely in many cases, there is the potential that the LQG may not always be familiar enough with the CESQG's individual waste streams to ensure proper management decisions for the waste. An example would be in the University Laboratory setting where one LQG may receive a wide variety of smaller quantities of waste from several different satellite laboratory locations with widely varying waste streams. One State recommends addressing this type of scenario through the use of waste profiles and waste acceptance protocol utilized by commercial TSDFs.

One State suggests if a LQG consolidates waste across State lines, they should be required to send a copy of their notification form also to the regulating agencies for States in which sending CESQG facilities are located.

Most States support allowing CESQGs to send hazardous waste to LQGs under the control of the same person. However, some States may have siting criteria that would currently preclude the receipt of off-site waste without first meeting the requirements of those regulations.

One State agrees with EPA's assessment that an unknown amount of CESQG waste is being taken to municipal landfills and disposed of in a less than ideal manner, and that allowing CESQGs to consolidate waste at LQGs under the control of the same person for disposal may encourage disposal that is more protective of human health and the environment. While supportive of EPA's proposed change, this State encourages EPA to recognize the potential challenges and issues that States will face with regard to implementation of CESQG waste consolidation, such as an increase in complexity of inspections of LQGs which serve as consolidators, management of additional data regarding CESQG waste generation, and potential adjustments to fee structures for additional processing of paperwork. EPA may wish to develop guidance materials containing best practices and important considerations for States to reference during CESQG implementation.

Under the proposed rule, the CESQG would be exempt from the requirement to ship using a Hazardous Waste manifest. How would this waste be tracked? One State suggests adding a requirement for the CESQG to use a Uniform Hazardous Waste Manifest when shipping to a

LQG under the control of the same person. This State also agrees with the proposed rule that LQGs should manage the hazardous waste it receives from a CESQG according to LQG regulations.

One State points out changes would be necessary if the rule is finalized. These changes include on the federal level the Biennial Report instructions and forms as well as the RCRAInfo database. The Biennial Report instructions will have to make it very clear how the LQGs will complete the WR and subsequent GM forms. On the State level, these changes would affect hazardous waste databases and State forms and instructions. This could prove cumbersome to the States with limited resources for conducting the core program requirements much less any changes. This State also points out that some CESQGs already have EPA ID numbers, therefore a condition in the proposed rule should require the LQG to include that information when reporting.

One State points out the CESQG transfer scenarios within this section do not contemplate what would happen if a LQG had to reject a load. EPA should add a provision for rejected loads.

One State has posed a question regarding the transfer of hazardous waste from a CESQG to a LQG under the control of the same person: Will it be acceptable under this rule for a SQG to notify and operate as a LQG so that they can take advantage of this portion of the rule (accept waste from a CESQG under the same Person)? This should be addressed if the rule is finalized.

Section VII.C.1 (Page 57930): The example of allowing different academic laboratory buildings that are CESQGs to send their hazardous waste to another industrial entity that is a LQG is contradictory to the title of this Section. Industrial entities are not owned by the same person as universities. One State believes this example is confusing.

Section VII.C.2 (Pages 57930-57931): For the allowance of CESQGs to send their waste to a LQG under the control of the same person, EPA has defined "person". However, there is some discussion of what "control" means but no proposed definition. In order to be implemented consistently, one State suggests promulgating a definition of "control".

Section VII.C.3 (Page 57931): The Labeling and Marking of Containers section provides a high level of detail regarding the requirements for CESQGs. One State believes the section does not contemplate if it would be appropriate to label CESQG transfer waste in a manner that allows generators and regulators alike to be able to differentiate it from waste that was solely generated on-site at the LQG. Additionally, it is not clear which generator retains the ultimate responsibility to ensure proper management and disposal of the waste once the waste is transferred to the LQG. This should be clarified if the rule is finalized.

One State recommends that EPA clarify a specific location where labeling and marking should occur. It is advised by the State that labeling and marking occur at the point of initial generation (rather than at the point a decision is made to send waste to a parent company). The proposed rule does not require the use of a hazardous waste transporter to transport the CESQG waste to the LQG. EPA should consider the potential issues associated with having hazardous waste transported by a potentially less knowledgeable or accountable person or company.

The Agency requested comment on examples of when the U.S. Department of Transportation (DOT) shipping name would not meet EPA's intent of "identifying the contents of the container" and suggestions for addressing this situation. One State believes the label does not generally have enough information to make a full waste determination. For example, generators typically do not include process information on the container labels which is an important component for waste determinations. A suggested approach would be to require CESQGs to generate a waste profile sheet prior to transferring their waste to another LQG under control of the same person. The LQG could then review the profile during the acceptance period to ensure that the waste meets acceptable parameters.

EPA is proposing that LQGs notify 30 days prior to receiving waste from CESQGs in the Comments section of EPA Form 8700-12. One State suggests this notification should be a specific line item on EPA Form 8700-12. This will allow EPA and the States to query RCRAInfo to find these facilities. "Comments" fields are not searchable in RCRAInfo. In order to adequately communicate to inspectors (as is stated in the proposed rule), the information should be captured by RCRAInfo. Form 8700-12 would also have to be revised to include the name of the legal owner/operator of each entity (i.e., both the CESQG and the LQG). Another State believes this notification should help regulators track LQG participation. However, regulators will not be able to understand the entire picture because only the LQGs would be required to notify under the current proposal. This State believes that it would be beneficial to have CESQGs notify if they plan to participate in the transfer proposal for tracking purposes. Since it is not mandatory for CESQGs to participate in CESQG transfers, the burden to notify would only be held by those that choose to participate in the waste transfer program.

Section VII.C.3 (Page 57932): Most States agree with LQG recordkeeping requirements.

Section VII.C.3 (Page 57932): One State believes EPA should clarify what is meant by "the earliest date any hazardous waste in the container was accumulated on-site" in the following statement in the "Labeling and marking of containers section: "If the LQG is consolidating incoming hazardous waste from a CESQG with either its own hazardous waste or with hazardous waste from another CESQG, the LQG would be required to mark each container with the *earliest date any hazardous waste in the container was accumulated on-site*." (*emphasis added*) Is this the date it was received at the LQG? This is unclear in the proposed rule.

The issue of CESQG consolidation with LQG waste streams is briefly addressed in Column 1 by noting that the resulting consolidated container of waste must be marked with the earliest date any hazardous waste in the container was accumulated on site. One State believes the accumulation start date is an issue that needs to be addressed, however, a larger issue is not contemplated. The mixture of CESQG waste at a LQG could create a potentially hazardous situation if the waste streams are incompatible. This type of issue is prevented at permitted hazardous waste TSDs through facility specific waste analysis plans and through the use of generator profiles. EPA should consider having at least some level of minimum standards prior to waste acceptance and waste mixing at LQGs.

One State agrees that CESQGs who elect to transfer waste to a LQG under the control of the same person would require coordination if the waste is to be transported either "through" or "to" another State. This situation could pose a significant problem if the receiving State does not

adopt certain portions of the proposed rule. Further, if the waste is to be transferred through multiple States, then the CESQG's regulatory burden of ensuring compliance with the various rules would grow substantially. One simplified approach, albeit more restrictive, would be to limit CESQG consolidation to LQGs within the same State. By doing so, the issue of interstate shipments would no longer be a problem.

Section VII.C.8 (Page 57933): Most States agree with allowing CESQGs to ship to LQGs as long as they are under the control of the same "person" as currently defined in the regulations. However, there is some discussion of what "control" means but no proposed definition. In order to be implemented consistently, one State suggests promulgating a definition of "control". However, some States are concerned that the LQGs that will be consolidating the CESQG waste would essentially be conducting the same practices as permitted TSDs without the same level of safeguards and protections. For example, the consolidating LQGs would not have financial assurance, waste analysis plans, waste profiles for wastes generated offsite, Solid Waste Management Unit (SWMU) corrective action obligations, etc. If a large company has several CESQG generator locations, then the potential exists for large amounts of consolidated wastes at their LQG sites with less stringent safeguards than those required to be maintained at TSDs.

One State sees no benefit to additional wording being required on hazardous waste containers, and labeling these containers as "Very Small Quantity Generator Hazardous Waste." This would require additional regulatory text that is not made clear in the proposed generator rule changes (e.g., whether a LQG would have to re-label a container containing a container holding waste from multiple VSQGs as "Very Small Quantity Generator Hazardous Waste").

A couple of States do not believe that it is necessary for a LQG to resubmit an EPA Form 8700-12 for a CESQG within 30 days of the CESQG's name, site address, or contact information changing. This time constraint is more explicit than that put upon a LQG's re-notification requirements, and CESQGs have no notification requirements in current regulatory text.

Most States believe that the transfer of hazardous wastes from CESQGs to LQGs that are not under the control of the same operator introduces a large chance for improper management of hazardous wastes. The States are of the opinion that this form of agreement would allow LQGs to become, in essence, transfer facilities without the 10-day storage requirement of a transfer facility. Many States believe that waste consolidation at entities that are not under control of the same person may not be protective. The example proposed for this situation was high school clean-outs where waste could be consolidated at other waste management companies. As discussed above, this type of scenario could create the consolidation of large amounts of wastes with relatively few regulatory requirements for waste acceptance and consolidation. The risk of waste mismanagement appears to outweigh the potential reward of greater generator flexibility. One State commented this seems to be opening up the door to allow a facility to act as a TSDF, but not meet the TSDF requirements, including permitting and financial assurance. The incentives may not be the same as allowing CESQGs to send hazardous waste to LQGs under the same control (i.e., financial gain for the LQG rather than reduction in cost and liability for the CESQG). If EPA proceeds with this, it should definitely not be self-implementing and the LQG should have some minimum, enforceable requirements – if not a full permit, perhaps a standardized permit under 40 CFR 270 Subpart J.

EPA requests comments on an additional variation for allowing LQGs to consolidate CESQG hazardous waste when the generators are not under the control of the same person with a self-implementing request for approval. The implementing agency would have 60 days to approve or deny the request. After 60 days, the generator may start consolidating regardless of whether it has heard back from the implementing agency. The States disagree with this approach. There would be no incentive to manage the hazardous waste appropriately. This would also cause an undue burden on the States to review these type requests since the States' resources are already limited. One State cautioned that EPA should carefully consider the wording of any such regulation to ensure that requests are required to be submitted correctly (not to the wrong branch or bureau within the regulatory agency) to be valid.

One State believes that allowing these transfers is beneficial to everyone, as long as the receiving facility is approved by the authorized Agency. This State believes it would allow household hazardous waste (HHW) facilities and contractors to establish facilities to collect hazardous waste from off-site CESQGs that are not owned/operated by the same person. If the authorized Agency is notified of these facilities, then proper oversight can be established and large amounts of hazardous waste can be diverted from solid waste landfills at a cost savings to the regulated community.

Section VII.C.8 (Page 57933): EPA requests comment on establishing a process that would allow an entity to request approval from EPA or the authorized State to transfer hazardous waste from a CESQG to LQGs that are not under the control of the same person. Most States disagree with this approach. The States do not support the CESQG waste consolidation being extended to LQGs who are not under the control of the same person. There would be no incentive to manage the hazardous waste appropriately. This would also cause a burden on the States to review these type requests. The States' resources are already limited.

The self-implementing request for approval puts a burden on States to approve/disapprove the request by an arbitrary deadline. The approval process should be guided by the appropriateness and level of detail supplied within the request.

Section VII.D (Page 57933): The States support the proposal to require the Owner or Operator of facilities that recycle hazardous waste without storing it prior to recycling to comply with the biennial reporting requirements. Collecting this information would give a better overall picture of the amount and type of waste recycled, as well as allowing oversight of these activities. It is important for States to know where these types of facilities are and how much wastes they manage. Would this apply to those facilities that have on-site distillation units that recycle their own spent solvents daily without storing it?

Section VII.D (Page 57933): If the proposed rule is finalized, significant changes would be required by EPA including the Biennial Report instructions and forms (adding codes) and the RCRAInfo database. There are also changes the States would have to make including State-specific instructions and forms as well as State hazardous waste databases.

Section VIII.A (Page 57933): One State supports integrating the material from section §261.5 into part 262. However, the CESQG requirements could be handled much more effectively. While changing the name of CESQG to Very Small Quantity Generator (VSQG), the proposal

leaves intact some existing confusion about what regulations these generators are exempt from. With the new organization that is proposed, rather than treating some CESQG requirements as conditions of exemption from SQG and LQG requirements contained in part 262, it would be much, much clearer to treat CESQG requirements as being of only two types: 1) independent requirements or 2) conditions of exemption from part 270 permitting requirements—in other words, in the same way that SQG and LQG requirements are treated. This is logical because a CESQG may choose to operate under SQG or LQG requirements in order to retain a conditional exemption from part 270 permitting requirements in exactly the same way that a SQG may choose to operate under LQG requirements.

Section VIII.A.1 (Page 57933): A couple of States encourage EPA to define the terms "independent requirement" and "condition for exemption" in §262.1, along with the revisions to §262.10(a) which provides clarifying language for industry and the regulated community for implementation of the generator requirements and enforcement. These States believe the idea of explaining the difference between independent requirements and conditions of exemption is a very good one. However, these States believe that the status of certain requirements for CESQGs (whether they are independent requirements or conditions of exemption) remains unclear in the proposed regulatory text and preamble. While certain parts of the preamble text suggest that "making a correct hazardous waste determination is a condition for the exemption for CESQGs but an independent requirement for SQGs and LQGs", this is not logically possible or consistent with other parts of the preamble and proposed rule text.

Section VIII.A.1 (Page 57934): One State suggests all definitions be in §260.10 and not in §262.1 as stated in the proposed rule. As proposed, this could create more confusion instead of clarification as is stated as the purpose.

Additionally, EPA provided an example that non-compliance with a condition for exemption, such as a LQG accumulating hazardous waste for more than 90 days, can result in an entity losing its conditional status and becoming the operator of a non-exempt storage facility subject to the applicable requirements in §§124, 264, 265, 267, 268, and 270. In practice, a facility would not be cited in this example for operating without a permit. They would be cited for accumulating hazardous waste >90 days. Unless, of course, they had accumulated hazardous waste on-site for years or the containers were in very poor condition. Some States do not support this proposal. EPA proposes to add regulatory language pertaining to definitions for an "independent requirement" and a "condition for exemption" with the aim of clarifying distinctions between the two types of generator requirements. These States recommend that EPA consider excluding these definitions from regulation as formalizing these definitions would significantly alter the focus of enforcement actions taken by States. Historically, States have taken enforcement action commensurate with the severity of violation, and this method has proven successful. The proposed definitions would unnecessarily and automatically penalize the regulated community for potentially minor violations, and remove any discretionary judgment on behalf of States with regard to enforcement actions taken in response to violations.

Section VIII.A.2 (Page 57934): The States appreciate the addition of §262.10(a)(3) for clarifying the requirements of a generator to deliver its waste to an approved facility. While understood, the current regulation does not present a single straightforward statement of this requirement, posing a challenge for State implementation and enforcement. The three

subsections of §262.10(a) provide a basis for generators to understand the requirements set forth in the remainder of the section.

Section VIII.A.2 (Page 57934): It is confusing to state "a generator that accumulates hazardous waste on-site is also considered to be a facility storing hazardous waste unless it meets the conditions for one of the generator exemptions…" Accumulation refers to the time a generator can keep their hazardous waste on-site; storage requires a permit. This could be better worded by stating or defining how long a generator may accumulate hazardous waste on-site (i.e., LQG=<90 days; SQG=<180 days). Anything outside of that is considered to be storage. The driver for triggering the need for a storage permit should be predicated on the length of time the hazardous waste is kept on-site, not whether the containers are labeled, dated, etc.

Section VIII.A.2 (Page 57934): EPA makes a statement "This new addition will reinforce to generators that they must meet these independent requirements whether or not they accumulate waste on-site." This is confusing. It appears from this statement EPA perceives generators have a difficult time complying with the current requirements. One State does not believe this to be the case. This State does believe generators understand the requirements as they are currently written, with a few clarifications.

Additionally, to state that generators must meet these independent requirements *whether or not they accumulate hazardous waste on-site* is also confusing (*emphasis added*). Generators who do not accumulate hazardous waste on-site (i.e., treated immediately upon generation) are not subject to what EPA is now calling "independent requirements."

If these "independent requirements" are kept, they should not be predicated on whether or not hazardous waste is accumulated on-site or not. As stated previously, only in rare cases will generators not accumulate waste on-site.

If this is an improvement rule, EPA should revise the regulations to state/list the requirements of each generator category. By listing "independent requirements" and "conditional exemption," the rule is causing more confusion and little, if any, "improvement."

Section VIII.A.2.b (Page 57934): Following the logic in this section, if a generator fails to follow one of the conditions for an exemption (i.e., label, accumulation start date, etc.) they lose the exemption of being a generator and automatically become an unpermitted TSD. A couple of States believe this is not a practical application of the requirements. The facility should not automatically become an unpermitted TSD simply because they did not comply with one of the requirements. However, if the generator is not complying with the majority of the conditions (i.e., accumulating greater than timeframe allowed, containers not labeled or dated, etc.), then the implementing agency should evaluate whether the facility should be considered an unpermitted TSD. This seems to be causing more confusion and not clarifying how the regulations should be complied with from a practical application.

Section VIII.A.3 (Page 57934): There was no objection from the States on the proposed deletion of §262.10(c).

Section VIII.A.4 (Page 57935): One State strongly disagrees with this proposal. The generator requirements should be evaluated in their entirety. Agencies should not solely pursue formal enforcement based on one deviation from those requirements. EPA's Enforcement Response Policy defines a significant non-complier as those violators that have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents, are chronic or recalcitrant violators, or *deviate substantially from the terms of a permit, order, agreement, or from RCRA statutory or regulatory requirements* (*emphasis added*). "With respect to substantial deviation from the terms of a permit, order, agreement, or from RCRA statutory or regulatory requirements, this criterion involves a judgement call based on the totality of circumstances associated with the violator." This State believes EPA should re-evaluate this proposed requirement. If any change is made it should be to simplify the requirement so that the regulated community and the implementers may clearly understand each element.

One State concurs with EPA's revisions to §262.10(g) to clarify the potential enforcement for failure to comply with the conditional exemption of generators.

Section VIII.A.5 (Page 57935): There was no objection from the States on the proposed deletion of the Laboratory XL Project Regulations.

Section VIII.A.6 (Page 57935): The States agree with and support the addition of a new requirement at §262.10(a)(3) that states "a generator shall not transport, offer its waste for transport, or otherwise cause its waste to be sent to a facility that is not a designated facility…"

Section VIII.B. (Page 57935): The proposed revisions to hazardous waste determination at §262.11(a) are commended by one State. The proposed language provides more detailed information on the process of waste determination, most importantly the concept of "point of generation". This State offers insertion of one parenthetic statement into the proposed language. While it may appear redundant, the following suggested statement further emphasizes the basis for the definition of point of generation, as follows "(a) A hazardous waste determination for each solid waste must be made at the point of waste generation ***(i.e., when the material first becomes a solid waste)***, before any dilution, mixing, or other alteration of the waste occurs..."

Section VIII.B. (Page 57935): In order to provide all possible situations in which a solid waste might be a listed waste, in particular due to mixture or derived from scenarios, one State suggests that cross references to §261.3 be added to this section. Observations have been made of the increased use of waste reclamation processes by generators such as portable solvent distillation units. The commercial vendors of the units often do not provide information on the regulatory status of the process residuals, leaving the generator to find and understand the concept of derived from listed wastes, complicated further by the characteristic- versus toxic-based listings. This State believes by placing the mixture and derived concepts into §262.11, it will be more apparent to the generator.

Section VIII.B (Page 57935): EPA proposes several revisions that aim to clarify the process of making hazardous waste determinations and to improve compliance among generators. Current regulations require generators to document hazardous waste determinations. The proposed rule would continue the requirement to document all hazardous waste determinations but would also require SQGs and LQGs to document non-hazardous waste determinations. Additionally, EPA

proposes to clarify how hazardous waste determinations are made, including where the determination should occur, how generators can use their technical knowledge, and how generators should evaluate wastes for hazardous characteristics. The States are supportive of EPA's proposed changes pertaining to hazardous waste determinations. However, one State recommends that EPA specify how validity evaluations of data will be made. It is recommended that "as necessary to document the generator's determination' be inserted into the fifth sentence of §262.11(e) so that it reads as follows:

> *The records must include, but are not be limited to, the following types of information as necessary to document the generator's determination: The results of any tests, sampling, or waste analyses; records documenting the tests, sampling, and analytical methods used and demonstrating 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; and records which explain the knowledge basis for the generator's determination, as described at 40 CFR 262.11(d)(2).*

The State feels this recommended insert clarifies that the records that must be retained are only the ones that are necessary to make an adequate determination.

Section VIII.B.3 (Page 57939): The States agree with the premise of adding a new §262.11(a) to clarify when the waste determination must be made. However, there are a lot of conditions listed in this one paragraph. One State suggests that EPA consider breaking the requirements down into sub-paragraphs (a) (1), (a) (2), and (a) (3). It is believed that breaking this section down would help clarify the requirement.

Section VIII.B.5 (Page 57940): The States believe the proposed changes to §262.11(c) help to clarify what constitutes an accurate hazardous waste determination.

Section VIII.B.5 (Page 57941): One State questioned can a statement of non-hazardous waste determination be the Safety Data Sheet (SDS)? This State does not expect the SQGs with simple hazardous waste streams spending a lot of time writing a statement they determined all their other waste is not hazardous.

Section VIII.B.6 (Page 57942): Most States support requiring SQGs and LQGs to maintain records supporting their solid and hazardous waste determinations. Additionally, in the preamble discussions, EPA points out that where CESQGs have been inspected, instances were found where the generator failed to make an accurate hazardous waste determination resulting in the generator becoming subject to the SQG or LQG regulations. One State believes requiring a CESQG to document their waste determinations, even for wastes that are determined to be non-hazardous (solid waste), will help the facilities ensure that an adequate waste determination was conducted, and to know when an updated waste determination may be required. This will help ensure that the CESQG is properly classified and managing its hazardous waste. Therefore, most States suggest adding the same recordkeeping requirement for CESQGs.

However, one State does not believe that requiring a facility to document and maintain records for their hazardous waste determinations addresses the issue of facilities failing to make hazardous waste determinations. This State believes facilities that make hazardous waste

determinations typically have documentation demonstrating that these wastes are non-hazardous, and those facilities that fail to properly determine their hazardous wastes are already out of compliance with regulations. This State believes this regulation will lead to additional violations for facilities while failing to increase rates of accurate hazardous waste determinations, thereby providing no benefit to the facility or the regulatory agency.

One State believes that waste determinations should be made by analytical testing every two to three years, even when the generator believes that the waste stream is consistent. This State believes that writing a list of specifications for when to re-test/re-determine the nature of a waste stream would be an impossibly complex undertaking, and that generators would not read or follow the inevitably highly detailed document that could be produced. Instead, this State believes that waste determinations should be good for a limited period of time (two or three years) and that new waste determinations should be made and documented at regular intervals.

One State suggests rather than eliminating §262.40(c), it could reference §262.11(e) recordkeeping requirements for waste determinations, so that someone looking for all the recordkeeping requirements in §262.40 would find the §262.11(e) requirement as well. This State also noted that §262.44 references §262.40(c), so EPA will want to make a conforming change there if §262.40(c) is eliminated. This State suggested adding a reference to §262.11(e) in §262.44 and a reference to §262.42(c) may also be missing from §262.44.

Section VIII.B.7 (Page 57945): As stated by EPA, at the core of the RCRA hazardous waste program is the need for generators to make an accurate hazardous waste determination. EPA also quoted a 1993 Federal Register (FR) notice and stated the notice points out that while using process of knowledge is "seemingly attractive because of the potential savings associated with using existing information, the facility must ensure that this information accurately characterizes applicable wastes." Therefore, the States support adding this language that requires waste determinations to be accurate. The States believe this single word provides more of a framework for ensuring and enforcing correct determinations and the proper management of the waste.

Section VIII.B.8 (Page 57945): Many of the States believe there is no added benefit to having generators keep their waste determination records until closure. Some States believe there is merit to requiring all generators, including CESQGs, to maintain these records for at least 3 years. However, one State disagrees with the idea of requiring a CESQG to maintain documentation of hazardous waste determinations. This State feels there would be no environmental benefits attained from this requirement, as a lack of facility documentation does not necessarily mean the facility has improperly disposed of their hazardous wastes.

Section VIII.B.9 (Page 57946): Waste determinations are very process specific and it seems to some States it would be very difficult to make an "Electronic Decision Tool" that would be useful to all generators. One State believes that an electronic decision tool for hazardous waste determinations would likely be beneficial to facilities, but also firmly agrees with EPA that such a tool could never be all-encompassing for an accurate hazardous waste determination. For this reason, the State is of the opinion that such a tool would likely be a greater cost than the proposed benefits would offset. Another State believes for many CESQGs and SQGs, understanding the waste determination decision process is complicated and confusing and therefore they defer the entire process to the TSDF representative. This State does not believe

that the audience which would most benefit from an electronic decision tool would generally seek to use it and the CESQG and SQG would continue to rely upon the TSDF to assist with or make all waste determinations.

Section VIII.C. (Page 57946): Most States agree with EPA's identification of the need to account for SQGs, as well as all other generators, and their contribution to the totality of hazardous waste. Therefore, most States support re-notification for SQGs and LQGs on a biennial basis by March 1 of each even-numbered year. Some States do not support different requirements for SQGs and LQGs. Additionally, some States already require an annual re-notification. One State believes LQGs and SQGs should be able to confirm or update site information on a copy of the previous notification, on Form 8700-12, or on other form approved by EPA or an authorized State. Additionally, other States collect SQG data as part of their annual fees. Those annual fee submittal dates can vary. Those States should be able to use their annual fee forms instead of Form 8700-12 to collect SQG information. The States should have as much flexibility as possible in requiring the re-notification of LQGs and SQGs to ease the burden.

Another State agrees that LQGs and SQGs should be required to re-notify when certain information changes. This State also agrees that SQGs and LQGs should be required to confirm or update their information no less frequently than every two years. However, EPA should allow authorized States to determine the schedule for obtaining the information. Some States do not have the resources to collect re-notification information from all SQGs by February 1 in the same year that biennial reports are due.

There are several States that currently require SQGs to submit biennial reports which often require the same information as Form 8700-12. For those States, re-notification for SQGs should remain March 1st in even-numbered years according to their regulations. To change the submittal date to February 1 of even-numbered years would require a rule change. In addition, those States should be able to use their biennial report forms instead of Form 8700-12 to collect SQG information.

A couple of States support the addition of a re-notification requirement for SQGs and LQGs, but would rather the SQG re-notifications occur on a different schedule from the biennial report. These States prefer SQGs to re-notify on the years opposite the biennial report and LQG notifications (i.e., SQGs re-notify by March 1 of odd numbered years). One State believes in order to solve the potential problem cited in the preamble (generator status changing back and forth without re-notification), and because the generator status is a piece of information so critical that it should be kept constantly up-to-date, they recommend adding the requirement for re-notification when generator status changes *in addition to* the two-year cycle of re-notification.

Another State recognizes the importance of maintaining current and accurate information of the universe of hazardous waste generators, and also notes the burden of entering notification data into the RCRAInfo database falls predominantly to State staff, as is recognized in the preamble of EPA's proposed rule. The rule proposes that SQG re-notification be required by February 1 of each even-numbered year. Considering the large number of SQGs in many States, this State believes the February date would likely overlap with LQG biennial report data entry which begins in January for many States due to early submittal of LQG reports. A couple of States

suggest the SQG re-notification deadline occur in odd-numbered years to reduce or spread the burden for States, as well as corporate and/or public entities responsible for submitting notifications for multiple facilities/sites.

One State suggests that the regulatory language in §262.18 reference re-notification by means of "myRCRAId and/or use of the EPA Form 8700-12." By encouraging use of myRCRAId, this lessens the manual data entry burden on States, as well as users.

One State believes the "rolling" re-notifications option may possibly work. However, this would require EPA to prepare a report in RCRAInfo that States could use for tracking purposes.

Another State suggests to reduce the burden for re-notification on the State (and on generators), generators with no changes to report should re-notify by being able to search for their information online and click a 'no changes' button to constitute re-notification for that year.

One State strongly agrees with EPA's opinion that there are a large number of facilities that do not have up-to-date information; this State maintains up-to-date information of its LQGs and SQGs for financial purposes. Those LQGs and SQGs that no longer pay fees are inspected and their information updated in RCRAInfo. Therefore, this State has internal policies in place that prevent its SQG and LQG universe from being outdated. For these reasons, this State believes that additional re-notification requirements for SQGs and LQGs will create an undue burden for both the State and the regulated facilities. This State also believes the proposed requirement for LQGs and SQGs to re-notify every two years is excessive and, in the event that the EPA does require facilities to re-notify, the facilities should only be required to re-notify in the event that information that would be included in the 8700-12 form changes (e.g., the owner/operator changes, or the generator status changes). Additionally, the use of electronic manifesting has the possibility of making all of these requirements obsolete, as it could be possible to data-mine a facility's manifests and determine their generator status, thereby eliminating the EPA's concern about having an outdated count of LQGs and SQGs.

Section VIII.D (Page 57948): EPA believes that the addition of "this paragraph (§262.13(a)) on how to make a generator category determination should provide specific instructions on this matter for the regulated community and thereby improve compliance with the generator regulations." 40 CFR 262.13(b) describes how "generators of both acute and non-acute hazardous wastes" are to determine their generator category. There is no provision included for generators of acute or non-acute hazardous wastes. Additionally, there is included in the proposed 40 CFR 262.13 Table 1-Generator Categories Based on Quantity of Waste Generated in a Calendar Month. However, there is no reference to this Table in the proposed regulations. The States suggest if this is finalized, a reference be included. No States opposed the proposal.

Section VIII.E (Page 57948): The States support the proposal to require marking hazardous waste numbers on containers prior to shipping the hazardous waste off-site to a designated facility. The proposed marking adds another level of hazard communication for regulatory inspectors and emergency responders. This additional marking information also provides for quicker and more confident acceptance screening at the receiving facility. It is noted that many permitted one-year storage facilities already have this marking requirement for containers accepted into the storage unit, both from on-site as well as off-site generators and/or facilities.

One State believes the facility should mark hazardous waste containers with EPA hazardous waste numbers at the time of placement into the facility's central accumulation area. This increased regulation would improve the inspection process and the facility's understanding of what hazards are associated with the hazardous wastes the facility stores on-site.

Section VIII.F (Page 57949): EPA's proposal discusses new generator standards for labeling containers, tanks, drip pads, and containment buildings, designed to clearly identify hazards in accumulation areas and transfer facilities. While one State supports the concept of increasing transparency associated with hazards and simplifying hazard labeling through the use of established methods and plain English, it recommends that EPA, if possible, select a single labeling method, rather than allowing generators to select from several established methods. Selecting a single labeling method would standardize labeling of hazardous wastes across the country, creating greater continuity with regard to emergency response, particularly in cases where responders may come from bordering States, and providing regulatory bodies, generators, and other relevant entities operating in multiple States with a single method to recognize, rather than multiple potential methods. This State also recommends that EPA provide very explicit instructions to generators as to what will be acceptable to meet any plain English labeling requirements that are finalized. For example, a generator may interpret that any of the following would be acceptable labeling: "used solvent," "organic solvent," or "halogenated organic solvents." This State also recommends that EPA specify that labeling should occur at the initial point of generation. This same State supports the use of DOT hazard class labels and the National Fire Protection Association (NFPA) diamond to address this issue. DOT hazard class labels are already currently required on containers while in transport. As outlined in 49 CFR 172, DOT hazmat labels are required on specific types of packages, such as drums, totes, boxes, that are transported. The transport vehicle itself must be marked with DOT placards to warn of the hazards associated with the hazards of the materials, including hazardous wastes, being carried in a tank car, cargo tank, portable tank, bulk packages, or vehicles or containers containing non-bulk packages. NFPA diamonds are used on the exterior of buildings (including containment buildings) and tanks. Both of these methods are readily recognized by emergency response personnel. DOT hazard class labels would also provide the hazard protection awareness for both visitors and workers of the dangers associated with a container of hazardous waste. The NFPA diamond would provide identification of the hazards associated with a storage area. Additionally, contingency plans for generators and training provided for workers to explain this as part of a comprehensive hazardous communication system could easily reflect use of these labeling systems.

Another State believes leaving the options for identifying the contents and indicating the hazards of containers, tanks, drip pads and containment buildings less prescriptive will help the generator be able to choose the methods that work best for their facility.

Section VIII.F.1 (Page 57949): EPA is proposing that generators mark their containers of hazardous waste with the words "Hazardous Waste" *and* with other words that identify the contents of the containers (*emphasis added*). Most States support this proposal.

Additionally, EPA proposes to require SQGs and LQGs to mark containers with the applicable RCRA hazardous waste codes prior to transporting hazardous waste off-site to a designated RCRA facility for subsequent management in order for employees, inspectors, emergency

responders, and waste handlers to better understand the potential hazards associated with the contents of hazardous waste contained in a unit. The intent behind this additional labeling requirement makes sense but may seem redundant from the perspective of the generator, and may not prove useful to emergency responders if unfamiliar with RCRA hazardous waste codes. Most States believe DOT shipping codes are not the best choice for identification of contents. "Spent solvent" or "Paint waste" are better choices, something easy to understand and terms that at facility employee would generally use. Additionally, most emergency responders do not know what the RCRA Hazardous waste codes are and what they mean.

Section VIII.F.2 (Page 57951): Based on knowledge and experience, generators that accumulate hazardous waste in tanks do not change the type of waste placed in the tanks. Therefore, most States feel it is sufficient for generators to mark their tanks with the words "Hazardous Waste." It is not believed that adding a description to the tank adds any additional protection. Most States support using inventory logs, monitoring equipment, or records to identify that date upon which each period of accumulation begins. In practice, this seems to work well.

Section VIII.F.3 (Page 57951): The States that provided comments do not support labeling Drip Pads with the words "Hazardous Waste" in a conspicuous place easily visible. Typically, the treatment solution is used multiple times before it becomes a waste. However, the States do support using inventory logs or records to identify the contents of the drip pad.

Section VIII.F.4.a (Page 57952): The States fully support adding a requirement to document weekly container inspections and keeping the records for three (3) years. Documentation of the inspections conducted by the facilities should occur regardless of whether there is secondary containment. It is the States' experience that facilities failing to document their weekly inspections have a tendency to have more violations than those that document their inspections. One suggestion is that the EPA require documentation of weekly inspections to be accurate. Inspections performed by State officials often reveal a facility's weekly inspections indicate everything is fine, yet the inspection reveals the facility has been failing to correctly document inspections as evidenced by the labeling, dating, and condition of containers. The States also believe inspections should be documented regardless of the amount of waste generated or accumulated.

Additionally, EPA should clarify the definition of "weekly" to mean within seven (7) days. The lack of clarity regarding the definition of weekly has been a significant source of confusion for generators and has resulted in violations on multiple occasions.

SectionVIII.F.4.b. (Page 57952): The States agree with and support the proposed change requiring SQGs to document their tank inspections. Tank inspections should be documented even if the tanks have secondary containment. Inspections should also be documented regardless of the amount of waste generated or the status of the generator. One Stated noted due to hazardous waste tanks generally being a greater volume than containers, the risks associated with inadequate tank inspections can be quite large.

Section VIII.F.4.c (Page 57953): The States support requiring both SQGs and LQGs to document the required drip pad inspections.

Section VIII.G.1 (Page 57953): The States support the addition of closure notification requirements for LQGs. Some States would like to see a closure notification requirement for SQGs. One State believes the applicability needs some further clarification. For example, a few questions that come to mind include, are these requirements applicable only if the facility is a LQG at the time the 90-day accumulation area will no longer be utilized? What if the facility goes from LQG to SQG and the 90-day accumulation area becomes a 180-day accumulation area, are the closure requirements still applicable? If so, when the facility will no longer utilize the accumulation area or when they covert from LQG to SQG or CESQG?

Section VIII.G.2 (Page 57954): The proposed rule includes requirements for LQGs to comply with closure standards similar to TSDFs. In particular, the proposed rule states, "Therefore, as with LQGs that accumulate hazardous waste in tanks, drip pads, and containment buildings, should a generator decide to close a container or stop accumulating hazardous waste in containers at the site altogether, it would be responsible for complying with the proposed regulations and removing all relevant hazardous wastes accumulated within 90 days of generating it and any hazardous wastes that also may have been accumulated in SAAs." Otherwise the LQG would be subject to all permitting requirements. How does a generator "close a container?" Containers are a one-time use unit and when full are shipped off-site to a TSDF. It is unreasonable to expect a LQG to perform closure activities in this situation. Most States agree with the proposed requirement for LQGs to comply with closure for particular units, but disagree with this proposal as it is written. The type of accumulation unit or site should be taken into account regarding certification of closure and closure requirements. Closure of a pallet with secondary containment is quite different than the closure of a room with secondary containment or a drip pad. EPA should clarify when the closure requirements apply (e.g., some LQGs will place pallets with secondary containment in an area of their facility where they have some room. When they move these pallets to another area of the facility, would they have to certify closure of the old area?).

One State believes EPA's proposal would strengthen closure regulations for LQGs accumulating hazardous waste in containers in central accumulation areas that plan to stop hazardous waste accumulation in those containers. LQGs in this circumstance would be required to meet the same type of closure regulations that apply for tanks, drip pads, and containment buildings, including in those situations where a generator is not able to demonstrate that its contaminated soils can be practicably removed or decontaminated. This State is generally supportive of this requirement. Additionally, the proposal would require closure as a landfill in instances in which LQGs accumulating hazardous waste in containers where clean closure is not achieved. As proposed, LQGs would be required to notify EPA or the State no later than 30 days prior to closing an accumulation area and within 90 days after closure of unit or facility. This State is supportive of this proposed change, but also recommends that EPA consider inclusion of the proposed closure requirements for all generator classifications, not just LQGs. If similar problems exist with either a CESQG or SQG container storage area, then a similar requirement would be considered applicable based on consideration of the potential effect on human health and the environment.

It is also recommended that EPA's final rule clarify that closure procedures are applicable to container accumulation areas, not individual containers, e.g., drums.

Section VIII.G.3 (Page 57955): Most States support the requirement for a generator to notify when the *facility* closes (*emphasis added*). However, the States do not support the proposal to require generators to notify the implementing agency when closing containers. Closing containers as described in the proposed rule is unrealistic from a practical point of view. If notification of closure is required for LQGs, it should only occur after closure of the hazardous waste accumulation unit or site.

EPA is proposing to require a LQG to notify EPA or the authorized State using EPA Form 8700-12 at least 30 days prior to closing the generators site or when the generator closes a unit accumulating hazardous waste. One State noted Form 8700-12 does not require the LQG to notify of the types of units being used to accumulate hazardous waste, therefore there is no place to mark on the form that the units are closed. Does EPA intend to modify Form 8700-12 as well as RCRAInfo, the national database in which all of the data from Form 8700-12 is entered?

The proposed rule would also require LQGs to notify EPA or the authorized State at least 30 days prior to closing the generator's site or when the generator closes a unit accumulating hazardous waste. One State is supportive of this requirement, but suggests that EPA consider circumstances in which it may not be feasible for a generator to notify 30 days in advance due to unforeseen circumstances. Additional language, such as notification within two (2) working days of decision the closure is needed, should be developed for application in instances where closure was not anticipated.

One State notes, compliance with the proposed language at §262.17(a)(8)(i) for notifying EPA no later than 30 days prior to closing a central accumulation unit is impractical for many of its federal facilities, as well as large campus-style private facilities. Often temporary central accumulation areas are established for short-term maintenance projects, such as firing range cleaning, lead-abatement projects, and construction projects. These temporary units may exist for fewer than 30 days. Since compliance with closure of a central accumulation area is self-implementing and not subject to closure plan development or approval by the regulatory agency, a notice to EPA immediately prior to or at time of closure would be sufficient versus 30 days prior. This State would prefer to see a requirement for notification of the establishment of new central accumulation areas prior to use.

One State noted if SQGs become subject to this requirement it will mean more of a burden to the States to process the forms and conduct inspections to verify closure. Additionally, numerous data management changes will be needed after the final rule, including RCRAInfo database, Form 8700-12, State hazardous waste databases, along with State forms and instructions.

The States believe additional clarification is needed for the closure requirements.

Section VIII.G.4 (Page 57955): EPA requests comment regarding its proposal to consolidate the closure regulations for hazardous waste generated by LQGS in §262.17(a)(8) and whether this approach would improve the readability/understandability of the rules, and thus, improve compliance. Please see comments to Section VIII.G.1, Section VIII.G.2, and VIII.G.3.

EPA is also requesting comment regarding whether SQGs that stop accumulating and close any or all of their hazardous waste accumulation units should notify EPA within 60 days after

closing. One State believes if EPA is proposing to add closure notification requirements for SQGs, they should resemble requirements for LQGs, including the notification timeframes. With that said, the State supports the requirement for notifying when the facility closes using EPA Form 8700-12. The notification should be sent to EPA or the authorized State.

One State believes that EPA's proposed consolidation of closure regulations further clarifies the responsibilities of LQGs. The State does not believe, however, that there would be a benefit for the State or facility if a SQG or LQG were to notify the State either before or after the closure of one of its waste accumulation units. The facility, if it has done its due diligence, will have managed and disposed of its hazardous wastes according to all regulatory standards. The State feels if the facility submits paperwork prior to closure, it does provide the State with the ability to inspect the facility as it is going through the closure process. However, areas of non-compliance should not be found unless the facility already had pre-existing issues.

Section VIII.H. (Page 57956): EPA is proposing to replace the word "facility" in the regulations with "site" because "facility" is defined in §260.10 as specific to TSDFs. However, EPA did not propose a definition of "site." One State believes EPA should include a definition of "site" in §260.10.

Section VIII.H.1 (Page 57957): One State disagrees with the proposal to explicitly state that the RCRA preparedness and emergency procedures regulations are limited strictly to areas where hazardous waste is generated and accumulated. Emergencies can occur at places other than hazardous waste generation and accumulation areas.

One State recognizes EPA's intent to streamline access to information contained within contingency plans during an emergency. However, requiring new LQGs to develop a mandatory executive summary for contingency plans may prove redundant and be equally as complex as development of the full contingency plan from the generator's perspective, given that most of the information that would be required in the executive summary would also be included in the full contingency plan. Additionally, this State recommends that EPA place greater emphasis on the quality of the contingency plan components and subsequent due diligence actions by the affected and involved entities. This State is also supportive of EPA's proposed requirement that generators document arrangements with Local Emergency Planning Committees (LEPCs) annually and maintain this documentation on-site and recommends that EPA provide some guidance or a template for this documentation. This State further recommends that EPA specify in the final rule how it will handle a circumstance in which a generator is unable to obtain written documentation of such arrangements from a LEPC. The State also agrees with EPA's proposed changes to clarify the applicability of the contingency planning and emergency procedures to hazardous waste accumulation areas. Likewise, the State is supportive of EPA's proposed clarification that contractors can be used for site cleanups. However, it is recommended that EPA consider adding language clarifying that contractors may assume liabilities typically assigned to generators, if included in the terms of their contract with a generator, such as waste characterization, management, and transportation, and clarify how contractors and LEPCs are expected to interact with one another within the context of emergency preparedness and planning. The State also agrees with EPA's proposed revision to update regulations such that they reflect modern technology utilized in emergency situations.

One State supports the requirement to provide emergency responders with an executive summary of the contingency plan and believes this requirement should be applied to all LQGs and TSDFs, including existing facilities. This State supports the change from "phone numbers (office and home)" to "emergency phone number" for emergency coordinator contact information.

Section VIII.H.2 (Page 57957): One State disagrees with the proposal to change the preparedness and prevention requirements to state that SQGs and LQGs must first attempt to enter into agreements with their LEPC. Generally, the LEPCs are not the first responders. Agreements should be made to entities that can provide services such as firefighting, spill response, etc. Another State commented refineries generally have their own specially trained response teams and do not have the local emergency response teams respond unless requested. Generally, they have agreements with the local emergency response teams in place. If the proposed rule is adopted, then a waiver should be allowed for these types of circumstances. This State suggested EPA look at something like E-Plan at erplan.net for electronic submittals.

One State believes the preference for arrangements with local authorities being coordinated through LEPCS, where applicable, is a step forward in best and consistent management of emergency communications and preparations. A single point of contact ensures more consistent sharing of information and coordination of local authorities. This single notice also significantly lessens the burden on smaller businesses in determining who to notify.

One State is neutral on federal changes to require submission of contingency plans to LEPCs rather than fire departments and other emergency responders, but does not interpret this change as "more stringent" and would not adopt this change into State rules. In this State, the LEPCs would not be sensible receivers for the contingency plans; this responsibility should remain primarily with local fire departments. The LEPCs are not functional bodies in terms of response, they do not have a physical office space in which contingency plans could be stored and accessed, and each LEPC covers an entire county.

Section VIII.H.2.b (Page 57958): EPA is proposing to require a SQG or LQG to make direct arrangements with its LEPC as part of this condition. The Agency believes the LEPCs, in turn, will work with their local responders to integrate the activities of SQGs and LQGs into the overall emergency response plan. One State disagrees with this proposal. The responsibility for making arrangements for emergency services should be with the SQG and LQG and not with the LEPC. This would cause an undue burden on the LEPC. This State suggests including a requirement for SQGs and LQGs to contact the fire department annually so they are aware of any hazards at the site.

One State is of the opinion that a SQG or LQG should only be required to communicate with their LEPC or local authorities in the event that the facility has a major change in its operations.

Section VIII.H.2.c (Page 57959): One State agrees with the proposal to require generators to maintain records documenting arrangements with the local fire department, but not with the LEPC (for the reasons stated in previous comments to Section VIII.H.2 and VIII.H.2.b).

Section VIII.H.2.d (Page 57959): The States believe all generators should make arrangements with the local authorities even if the generator has their own emergency response team. It has

been our experience the off-site emergency services may be needed during catastrophic or long-lasting incidents. One State suggested that in some special instances the documentation of these arrangements should state that the facility is capable of performing their own emergency response. This information would need to be documented in the facility's contingency plan, and should only be sufficient on a case-by-case basis.

Section VIII.H.3.a (Page 57959): The Agency is proposing to require that a "new LQG", as of the effective date of the rule, submit an executive summary of its contingency plan to the emergency management authorities. What does EPA mean by "new LQG?"

One State supports allowing a generator to submit an executive summary, with the eight (8) items listed in the proposed rule, instead of the comprehensive contingency plan to the emergency responders (i.e., fire departments, EMTs, etc.) with a *copy* to the LEPC (*emphasis added*). This State also suggests adding the evacuation routes to the summary.

The Agency is not proposing to require that a LQG that has already developed and submitted a contingency plan to local emergency responders develop an executive summary because of the additional burden that would be imposed on existing LQGs to go back to their contingency plans and develop the summary. Should the proposal for an executive summary be finalized, one State suggests writing the regulations to give the generators a choice of an executive summary or a comprehensive contingency plan. This State agrees that SQGs should also submit executive summaries to first responders.

One State believes requiring a map that shows where hazardous waste is generated and accumulated that is to be included with the executive summary submitted to LEPCs will pose a unique burden on federal facilities and large campus-style facilities which may have changing sources of hazardous waste generation and accumulation areas. This State suggests that this section allow for submittal of revised maps under this section to the LEPC without having to re-submit the entire executive summary, as well as maintaining a current map at the facility to be provided immediately to emergency responders during an incident.

One State supports the development of electronic applications for RCRA contingency planning. It is their understanding that fire departments are already using CAMEO in such a way that some form of integration between the existing CAMEO interface and the RCRA contingency planning information would make the most practical sense. Ideally, the State imagines that software could be developed which would allow different parts of the contingency plan to be stored separately and readily accessed as desired. An electronic contingency plan in this format would not require a separate executive summary, because the application could generate one instantly by bringing together only the desired parts of the plan and a function could be built in that would call up the parts of the executive summary listed on pp. 57959-57960.

Another State believes an executive summary to local authorities should be included in the contingency plan and it should be a requirement for LQGs. This State believes that LQGs should submit the first executive summary to LEPCs whenever they significantly change their contingency plan. SQGs have small quantities of hazardous waste and are therefore less likely to have the extreme dangers associated with hazardous wastes that LQGs have. For this reason, the

State is of the opinion that SQGs should not be required to develop and submit an executive summary of their contingency plan.

One State suggests a requirement to document submittal of the executive summary of the contingency plan to the LEPC or local authorities.

Section VIII.H.3.b (Page 57960): Generally, the States agree with the proposal to remove the references to addresses in the contingency plan. The States also agree with the proposed change to the reference to home and office telephone numbers to "emergency telephone number." The States recommend making this change in §264 as well.

Section VIII.H.3.c (Page 57961): One State agrees the contingency plan should include an evacuation plan and an alternate route. Another State feels that the requirement to identify all potential evacuation routes is excessive. The facility posting evacuation routes and holding drills is sufficient in an emergency, and emergency responders are likely to use evacuation routes that are readily observed.

Section VIII.H.3.d (Page 57961): One State believes having an electronic copy of a contingency plan could be useful for some emergency responders and a hindrance for others. This State believes the regulations should encourage an electronic copy to emergency responders when it is applicable, but not make it a requirement. Some counties or cities may not have the means to accept or work with an electronic copy based on funding, internet access, etc.

One State feels that creating a contingency plan/executive summary submission module for CAMEO should be created for these proposed regulations. This would allow LEPCs to receive contingency plans and executive summaries in the same way that they are already receiving information required by the Emergency Planning and Community Right-to-Know Act (EPCRA).

Section VIII.H.4.a (Page 57961): EPA is proposing to modify the introductory paragraph to §265.32 to provide generators the flexibility to determine the most appropriate locations within the facility to locate equipment necessary to prepare for and respond to emergencies. One State does not believe this change is necessary. The current regulatory language states "All facilities must be equipped with the following…" The regulation does not prescribe a specific location.

Section VIII.H.5.a (Page 57962): One State believes the emergency contact information should be posted at other areas in the facility, not just the generation and accumulation areas. Otherwise, the State supports the proposed change to require a SQG to post the "name and emergency telephone number of the emergency coordinator" next to the telephone.

One State believes the posting of emergency contact information at the hazardous waste generation/storage points and in public areas such as break rooms is the most logical choice for the proposed changes to §262.34(d)(5)(ii). Most facilities allow their employees to have a personal device on their person. For this reason, personnel may not look for a landline to contact authorities in the event of an emergency.

Section VIII.H.5.b (Page 57963): One State is concerned that stakeholders thought the original language required the SQG to physically clean up the spill. No regulatory agency (EPA or the

States) would take an enforcement action if a contractor cleaned up the spill and not the SQG. The State does not believe the proposed change is necessary.

One State is concerned that it does not seem that all potential containment of hazardous waste can be contracted out. For example, if a drum tips over, starts leaking and heading towards a storm drain. Shouldn't immediate action be taken to stop/contain the release rather than having to call and wait for the contractor to arrive? What if for some reason the contractor is not able to arrive in a timely manner or the facility is in a remote area? Should the facility be allowed to just wait for the contractor to take any action?

Section VIII.H.6 (Page 57963): One State supports the proposal to add the words "online training" to the personnel training provision of the regulations. This should also be changed in §§264 and 265.

Section VIII.H.7 (Page 57963): One State agrees personnel training and written job descriptions should be required for personnel conducting the five (5) tasks listed. However, the State believes personnel training should also be required for those persons associated with generating the hazardous waste, including SAAs.

One State believes that the training and documentation of hazardous waste personnel should occur for all employees that are directly involved with hazardous waste and the management of that hazardous waste. We are in agreement with the EPA that employees who work in satellite accumulation areas should have required hazardous waste training.

One State believes defining who is required to receive training might be done best by defining it as a performance-based requirement similar to how it is done for SQGs. Anyone managing hazardous waste should be trained to perform those duties adequately, and any training provided (including on-the-job training) should require simple documentation. However, the more cumbersome recordkeeping requirements for training should be reserved for those employees who are providing the training to others, responsible for recordkeeping (maintaining manifests, weekly inspection documentation, waste determinations, etc.), conducting waste determinations, and signing manifests. All other positions can be covered by the simpler performance-based training, where job descriptions, job titles, etc., are not really contributing to compliance with the regulations.

Section VIII.H.8 (Page 57964): The States believe any proposed changes that are finalized and could affect §§264 and 265, that those sections should be changed as well for consistency. The States are of the opinion that permitted facilities should not have lesser requirements than non-permitted facilities in the federal regulations. Since these proposed regulations increase certain requirements, any increased requirements should be revised in parts 264/265.

Section VIII.I.1 (Page 57964): One State believes as a general rule the SAAs in a manufacturing plant are not in locked cabinets or in locked rooms. They are generally in centralized locations along the assembly lines so all the employees, in several shifts, have access to them. SAA closest to the assembly line employees would be under their control and be at or near the point of generation. This State does not believe the regulated community would agree to buying several locked cabinets and placing them on the plant floor. It would be very

inconvenient for the employees to run and look for the person with the keys to unlock the cabinet every time they need to place waste in the SAA. The sites have controlled access so the entire building would be under control of the operator.

One State believes EPA has the opportunity to define SAA requirements with this new rule. This State would like to suggest specifically defining either one container or one container of each waste stream up to 55 gallons at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste.

Section VIII.I.1 (Page 57964): One State supports adding the requirement for SQGs and LQGs accumulating hazardous waste in SAAs to comply with Part 265 Subpart I container management standards for incompatible wastes.

Section VIII.I.2 (Page 57964): One State supports modifying the regulations to allow SAA containers to be vented under certain situations.

Section VIII.I.3 (Page 57965): One State does not support the proposed marking and labeling provisions for containers in SAAs. The State is concerned this proposed requirement is too burdensome for generators and will not add any additional protection. SAAs are specific to an area and the employees in that area should be trained on the hazards associated with that waste.

One State believes the change to the marking requirements for SAA containers to include the use of the words "hazardous waste" is commendable. The State believes the existing requirement at §262.34(c)(1)(ii) for the use of the words "hazardous waste" or other words that identify the contents has resulted in confusion for generators, inconsistent communication of container contents for emergency responders and regulatory inspectors, and potential for noncompliance for generators once the container moves to a central accumulation area. Consistent marking across all accumulation area containers is encouraged.

Section VIII.I.4 (Page 57965): One State supports the proposal to state “three calendar days” instead of the current “three days” for SAAs. However, in the preamble, EPA states this provision will be moved to §262.15(a)(2)(i), but it should be §262.15(a)(**6**)(i).

Section VIII.I.5 (Page 57966): One State does not support the use of a weight measurement for acute hazardous waste at SAAs. This would be very difficult for the regulators as well as the generators to document or verify. It is unlikely a generator would have a scale available to verify the weight. Additionally, for the reasons stated above, the State does not support adding a weight measurement for non-acute hazardous waste in SAAs.

Section VIII.I.6 (Page 57966): One State believes the proposed language for SAAs clarifies the intent. The proposed language should help generators and regulators better understand the intent and comply with the regulation.

Section VIII.I.7 (Page 57966): One State is not opposed to revoking a memo from January 1988 that allowed reactive hazardous waste (D003) to be accumulated outside a building and still be considered a SAA.

Section VIII.I.8 (Page 57966): The States believe "under the control of the operator" is subjective and can have different meanings at different facilities. Therefore, the States are of the opinion this should be left to the implementing agency. The States also believe that the term "under the control of the operator" has a much broader term than those examples in the proposed rules, e.g., a situation where the operator is regularly within view of the SAA during the course of their job, or a situation where the operator is expected to be able to observe any individuals that may enter or exit the SAA.

Section VIII.J.1 (Page 57968): One State believes the accumulation timeframe should be the same for SQGs no matter the unit type. The SQG accumulation timeframe limitation should be 180 days for containers, tanks, or drip pads. Being consistent will help improve and encourage compliance.

Section VIII.J.2 (Page 57968): One State believes the accumulation timeframe should be the same for SQGs no matter the unit type. The SQG accumulation timeframe limitation should be 180 days for containers, tanks, or containment buildings. Being consistent will help improve and encourage compliance.

Section VIII.L (Page 57969): One State commented that guidance should be consistent with the regulations, not the other way around. Changing the rule to state that only LQGs are required to submit a Biennial Report (BR) would make the rule less stringent in several States. Several States already require LQGs to report all the waste generated, regardless of when it was shipped. The State also commented they do not require one-time generators (short time generators) that generate LQG quantities of waste to submit a BR. It is difficult to determine if they were really LQG's because they often notified as such, to find out they were not.

One State commented removal of the BR data elements from the regulations is rather drastic. EPA should be able to add a generic description of the data elements missing from the current regulations. This commenter does not foresee any additional data elements being added to the BR in the future, so the rules will not have to be revised. The form should not dictate the regulations. This State has the same concerns regarding the Site ID form; EPA can add data elements as needed. This State is concerned that the generators do not know about the information collection requests and comment on them.

One State commented, in the BR instructions, EPA states that the OI (transporter information) is optional, which currently is not in compliance with §262.41(a).4. Referring to the form by number and not specifying data elements means transporters are no longer reported. Several States use the transporter information for targeting inspections and outreach.

One State supports the proposed change to the biennial reporting requirements to make the regulations consistent with Agency guidance.

One State believes EPA's proposal would require LQGs to complete biennial reports on all hazardous waste generated in a calendar year, even when it is managed the next calendar year and during months when they are a SQG. Additionally, recycling facilities would be required to

report wastes that are not stored prior to recycling. EPA indicates that these changes will make regulations consistent with existing reporting guidance. This State is generally supportive of these proposed reporting requirements.

Another State believes there is a remaining ambiguity (inconsistency between the preamble discussion and current guidance with biennial report form) regarding the reporting of waste generated in an even numbered calendar year but managed and shipped off-site in an odd (reporting) year. This State would like to see this resolved.

Section VIII.L.5: One State believes that the change to eliminate specific data elements in §262.41 will allow for greater facility understanding and compliance.

Section VIII.M (Page 57971): EPA is proposing to add to the regulations at §262.14(d) for CESQGs and §262.35 for SQGs and LQGs the following:

> "The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited."

One State does not support the language as written. The generator has no control on the "placement" of liquid hazardous wastes. They do have control where the hazardous waste is shipped.

Section VIII.N (Page 57971): Generally, the States support the proposed change to allow academic laboratories to accumulate unwanted materials for one (1) year instead of the current six (6) months.

One State does not support this extension. While there is not an increased risk due to volume of waste accumulated, there may be an increased risk due to campus schedule breaks with reduced staff presence in labs and the possibility of unknown wastes left in laboratories at the end of semesters. The proposed change is not consistent with the reasoning explained in the final rule that created subpart K.

Section IX (Page 57972): One State commented, in concert with this new provision, which is highly supported, it should also be cross-referenced at §262.16(c)(2) for SQGs that mix hazardous waste and non-hazardous waste which results in an exceedance on the SQG monthly threshold. Proposed Subpart L should be listed as an option in addition to complying as a LQG for that month.

One State noted, as written, it appears to meet the proposed goal in allowing CESQGs or SQGs to manage hazardous waste for a planned or unplanned episodic event without endangering human health or the environment. By allowing this to occur once per year with the possibility of requesting a second event or extension, it does not appear to allow generators to circumvent their current regulations, but to do as intended and operate under their current regulations rather than a more stringent temporary category. Depending on the advent of electronic notifications, it will also lessen the management and regulatory burden to determine the correct generator category throughout the year.

One State agrees that one episodic event with the opportunity to petition for a second event OR a 30-day extension is adequate.

It is unclear to one State whether the second episodic event request or 30-day extension are an either/or situation or whether both would be allowed. It should be specified to be an either/or situation more clearly. It does appear to allow both; so if a generator requested a second extension in a calendar year and requested 30-day extensions for both, it would be operating outside of its normal generator status for 150 days which is a good part of the calendar year.

One State believes CESQGs should not be allowed to treat hazardous waste other than in elementary neutralization during these episodic events. This State also believes the use of containment buildings and drip pads are generally more site specific and do not appear to fit in with the rest of the criteria for an episodic generator event.

One State is concerned the proposed regulations for "Alternative Standards for Episodic Generation" are too cumbersome for the generator to follow and comply with as well as the authorized State to monitor/enforce compliance.

One State commends EPA's attempt to reduce regulatory requirements for facilities that generate wastes episodically. However, the States are of the opinion that the requirement for a facility to notify the State or EPA of an episodic event would cause an excessive amount of paperwork, both for the facility and for the generator. The States believe an adequate solution to this perceived burden would be for the generator to simply maintain paperwork on-site justifying their reasoning for the episodic event. The State's experience is that CESQGs and SQGs are not familiar with current reporting requirements, so adding an additional reporting requirement will likely do nothing to increase compliance with the proposed regulations. The States additionally believe that the proposed regulations should allow a LQG/SQG to remove these episodic wastes within their typical 90/180 day accumulation time in order to prevent additional confusion for the facilities. Additionally, the facilities may have issues which cause a clean-out event to last much longer than 45 days from the start of operations, e.g., a clean-out event revealing that there is a structural defect and these wastes have to remain in the unit while the defect is resolved. This State does not agree with EPA's proposal to allow a facility more than one episodic event per year, as this implies the facility has the potential to generate hazardous waste at a high rate. Consequently, the facility would benefit from the increased requirements of a larger generator status as these requirements relate to employee and environmental protection. This proposal will possibly allow generators to operate under less stringent regulations while generating large amounts of hazardous waste for up to 90 days. The States believe the proposed time allowed for episodic generation is excessive.

One State supports the proposal and strongly believes that the rule banning treatment by CESQGs should remain in place during episodic generation events. This State believes that a CESQG wishing to treat waste should notify as a SQG and comply with all SQG requirements.
Another State commented the notification process is a logistical nightmare. There is no way to enforce these and would burden the State. The proposed management standards are over prescriptive. The SQGs should be able to manage the wastes generated during an episodic event in the same manner as all other generated wastes. Marking the containers with the words "Episodic Hazardous Waste" serves no valid purpose and would be hard to enforce.

The proposed regulation only states that the generator notifies EPA in an episodic event. One State commented this proposal, if finalized, should also include notification to the authorized States.

One State would prefer to see more explanation that episodic events are not for routine wastes, even if those wastes are only generated once per year (such as a routine tank clean-out, or routine/annual facility clean-out of expired materials). This would prevent facilities from deferring maintenance and clean-outs that should be done more frequently so that they can take advantage of the episodic event and avoid being classified as a larger generator. This State is also of the opinion there is no clear reason to have different requirements for labeling the containers generated from an episodic event from routine hazardous waste. This could create confusion and puts an extra burden on generators because these labels are not readily available and may require special ordering for these sparse events.

One State generally supports the proposed changes as they would allow generators the flexibility to pursue an exemption based on site-specific and temporary conditions.

Section IX.B.4 (Page 57974): One State noted the proposed rule for hazardous waste managed in tanks under episodic generation does not recommend certification or secondary containment requirements. If a SQG or CESQG is planning episodic generation of large quantities of hazardous waste that will be managed in tanks, then certifying the tanks design and structure by a professional engineer before being put into use would be a good idea. Once a SQG or CESQG jumps in generator status to a LQG, their tanks need to be certified by a professional engineer, just like any other LQG. It may also be advisable that the facility be required to have secondary containment installed, and depending on the type and amount of waste be able to follow the tank requirements for large quantity generators Section 265 Subsection J and Subsections AA, BB, and CC.

Section IX.B.6 (Page 57976): One State noted most of the recordkeeping requirements described are included in the notification form (if completed per the proposed rule) and the manifest. It would be clearer and less burdensome to simply require that the generator maintain a copy of each of those documents, and the additional documents listed, and eliminate the requirement to maintain a description of how the hazardous waste was managed under item (4). There is not a clear reason to require this description because they are required to comply with container management standards and they would simply be repeating those standards.

Section IX.B.9 (Page 57977): One State believes the proposal as written for an episodic event that involves two (2) calendar years is inconsistent with normal waste generation counting. Consistency fosters compliance with the regulations.

Section X. (Page 57977): Containers at transfer facilities are in transit and subject to the requirements of container labeling during transport found in US DOT 49 CFR. In some States, containers tend to remain in/on the transport trailers when they are at a transfer facility, so requiring a transfer facility to label those containers in accordance with this proposed language would require extra handling of said containers, potentially resulting in mismanagement (e.g., spills and releases). Some States are concerned that the proposed labeling may pose an excessive burden on transporters operating transfer facilities that store hazardous waste containers for 10

days or less as those labels and marking may need to be removed prior to continued transport to be compliant with US DOT 49 CFR. Of particular concern would be the allowance for identifying the contents of the container different than the US DOT required marking found in 49 CFR Part 172 subpart D and risk labeling different than required in 49 CFR Part 172, subpart E. In addition, for identification of risk, one State recommends removing the following language: "Transfer facilities also may use any other marking and labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers." This provision is overly broad and may cause confusion in the regulated community as well as for the regulators determining compliance with the requirements for transfer facilities.

One State supports the proposal to require transporters to mark and label containers at transfer facilities. This should not be a burden on the transporter since the generator is required to label and mark their containers prior to shipment off-site.

Section XI.A (Page 57978): The States agree with the proposal to modify the phrase "prepare and submit" to "complete and submit" for the biennial reports. The States believe that these proposed changes increase the clarity of biennial reporting requirements.

Section XI.B (Page 57979): The States agree with the proposal to give local fire departments the responsibility to issue waivers allowing the storage of ignitable or reactive hazardous waste >50 feet from the generators property line. One State also believes this waiver should be allowed to extend to interim status and permitted facilities.

One State believes this proposed change is favorable with the reason being that the local fire departments administer either the Uniform Fire Code (UFC) or the International Fire Code (IFC) and these codes are designed to be protective when storing ignitable or reactive wastes. As for requiring additional criteria as a condition of the waiver, it may be appropriate simply to defer to the fire code. In fact, certain States have opted to require that ignitable and reactive wastes are kept in areas designed, operated, and maintained in a manner equivalent to the IFC and/or applicable sections of NFPA Pamphlet #30 "Flammable and Combustible Liquids Code". Additionally, some States also require that these areas be inspected annually by a fire marshal or professional fire inspector. In this way, the generator can maintain compliance with both the State regulations and the fire code. The inclusion of the language found in §265.17(a) is also favorable as it is protective of human health and the environment.

One State neither supports nor objects to EPA's proposed rule that would allow generators to request a waiver for the 50-foot requirement pertaining to the location of containers containing ignitable or reactive waste from the property line. This State does concur that a Fire Marshal, or designated representative, should have the authority to inspect the generator's site and make decisions as to the applicability of the 50-foot rule. EPA should also consider how such a waiver would impact a generator's insurance policy.

Section XII (Page 57980): One State agrees with the proposed changes to §268.50 for consistency in labeling of containers by owner/operators of hazardous waste TSDFs.

One State commented the redline/strikeout version of the rule, §262.34 appears to have been deleted and reserved. However, §268.50(a)(1) still references the requirements of §262.34. This State also noted EPA is requesting comment for identification of waste codes, container contents and hazards of the contents to be in line with those changes being proposed for generators and transfer facilities. In general, it may not be appropriate to include such changes in this rulemaking as this rulemaking is focused on improvement of generator rules and §268.50(a)(2) is specific to owners and operators. However, the proposed rulemaking is favorable for more adequate identification of wastes being stored at a hazardous waste TSDF. This State recommends removing the following language: "or any other marking and labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers." This provision is overly broad and may cause confusion in the regulated community as well as for the regulators determining compliance.

Section XIII. (Page 57980): One State commented overall, the proposed reorganization is seen as favorable in meeting the goal of helping generators to better understand the regulations applicable to them based on their generator status. However, the proposal to incorporate 40 CFR Part 258.28 into the generator regulations for liquids being banned in landfills does not seem correct. 40 CFR Part 258.28 applies to liquids being banned from municipal solid waste landfills (MSWLF) and is not applicable to Subtitle C hazardous waste landfills. The more appropriate reference for generators would be §265.314 Special requirements for bulk and containerized liquids. (See Crosswalk Tables 4, 6 and 7). The State suggests it may be appropriate to incorporate §258.28 into the proposed very small quantity generator regulations, since disposal of CESQG in a MSWLF is allowed.

One State noted for those States that adopt by reference it will be easy, for those who do not, it will be a very time consuming.

Another State is concerned with the reorganization of the regulations. For States that adopt by reference, it will be easier; for those States who adopt verbatim, it will be more cumbersome and time consuming.

One State commented Table 6 "Crosswalk of Existing Citations to Proposed Citations For SQGs" does not appear to be all inclusive. In an effort to ensure that SQGs understand all that is required, this State recommends that the following citations be added to the table: §§262.11, 262.13, 262.15, and 262.18. A similar situation holds true for the LQG citations found in Table 7. In either case, an all-inclusive list would help ensure that generators can find their specific requirements quickly, provided the rule is finalized.

EPA requests comment on the proposal to modify the closure requirements for SAA containers. While one State acknowledges that there may be limited situations to where flexibility is needed, broadly expanding the current level of flexibility appears to provide generators with loopholes. For example, §262.15(a)(4)(ii) would allow generators to keep SAA containers open "for the proper operation of equipment," which is a vague requirement and needs further clarification. If flexibility is to be given, this State requests that it is done on a case-by case basis with prior approval.

The proposed changes for closure of SAA containers does not address §265 Subpart CC standards. One State questions how those requirements would affect the proposal and whether it would be appropriate to address the Subpart CC requirements within §262.15.

Section XIV. (Page 57984): One State notes the preamble [page 57984] omits §262.202(b) in the list of sections revised to remove the reference to existing §261.5(b). §262.202(b) is correct in the proposed rule on page 58003. Additionally, the preamble [page 57985] lists §262.201(a) twice and omits §262.202(a) and §262.204(a) in the list of sections revised to remove references to existing §262.34. The omitted sections are correct in the proposed rule on page 58003.

Section XV. (Page 57985): One State encourages the use of any electronic tools ("e-tools") for notices or reporting required by regulations that would result in a reduction of manual data entry by States. This State would support electronic submittal of any required notices, such as EPA Form 8700-12, VSQG to LQG, and contingency planning "red pages", with continued expectation of data consistency and security prior to acceptance. With the on-going development and ultimate implementation of the e-manifest system, this State would welcome an expansion of the system, or development of a complementary system, to also allow submittal of land disposal restriction notifications and import/export notices. Reporting of other elements of a site-specific nature which are not required to be submitted to EPA by regulation, such as training, weekly inspection, etc., are of a lower priority for development of e-tools by or for EPA. These elements, which do not require notice to EPA, are better suited for commercial development of e-tools.

One State noted with the reducing State and Tribal Assistance Grant (STAG) allocations, funding of these types of tools is not a priority. Relying on third-party vendors to develop and sustain these tools may be an issue as well as States having the funds to pay for them.

Another State encourages the use of any electronic tools for notifying of waste generation activities or annual/biennial reporting. Providing generators with electronic data management tools for recordkeeping and reporting has the potential to increase the efficiency of both data management and compliance monitoring by reducing or eliminating unnecessary paperwork. However, the EPA should take into account the accessibility of the electronic records to inspectors (i.e., ease of access, uniformity in layout, etc.) checking for RCRA compliance especially if third party developers are to be used. Also, the EPA should take into consideration possible problems that may arise with increasing use of electronic tools for reporting in areas that have poor access to the internet.

One State supports any electronic tools that the EPA may decide to implement, being of the opinion that tools for EPA's stated "contingency planning and emergency procedures recordkeeping and reporting requirements" should be of the highest importance. The EPA's proposed rules highlight the importance of potential tools for these regulatory requirements, as many changes are being proposed, particularly in the area of reporting.

Another State supports the creation and use of electronic tools. The State also commented that however, we at the State level simply do not have the capacity/resources to develop electronic tools. We also believe it is more efficient for such tools to be developed centrally by EPA and shared with the various States. We urge EPA to make sure that any tools and systems developed

are supported and can be improved quickly as they are rolled out and problems are discovered. For example, the State indicated it had just found out about myRCRAid from reading this rule proposal in September 2015 and have had difficulty getting all the information to get started using it. Many EPA staff the State has contact with at its regional office did not know about it. Before developing other electronic tools for generators, can we make sure these efforts are well-resourced and moving forward appropriately? Having recently read the e-manifest rule FR, we believe that security and specification issues are best handled by systems being developed and owned by EPA.

Section XVI. (Page 57986): One State is concerned some of the proposed regulations may be hard to enforce (i.e., verifying that SQGs label containers "episodic hazardous waste").

The following are comments on the Proposed Regulatory Changes

§262.10(a)(i) and §262.10(a)(ii) provide the independent requirements for small and large quantity generators, respectively. However, neither section references other important provisions for generators (i.e., §262.15 for satellite accumulation or the conditional exemptions located in §262.16 and §262.17). In an effort to make the regulations more user friendly, one State recommends that the requirements for each type of generator be co-located or referenced so facilities will be better able to find their own applicable requirements.

While §262.10(a)(2) provides a number of permitting exemptions, the on-site treatment of hazardous waste in tanks and containers is not included. One State believes it would be appropriate to include a reference for on-site treatment within this section.

§262.10(b): For a clearer and more logical reading order, one State suggests moving §262.10(b) before §262.10(a)(1) and suggests including reference to §262.11(a)-(d) in this section as well, since ALL generators must use §262.11(a)-(d) in conjunction with 262.13 to determine generator status.

In proposed regulatory text at §262.11(d) there should be an "or" after §262.11(d)(1)(ii) and before §262.11(d)(2).

There are several options included in §262.11(d)(2). One State suggests including subparagraphs (i) through (v).

§262.13(a): Instead of "a generator's category is determined monthly…" it should say "A generator must determine what generator category it falls into monthly…"

The introductory paragraph of §262.14(a) is confusing; it should be re-written to be similar to §262.16 and §262.17. The other requirements listed in §262.14 are conditions of exemption. The bottom line is: the re-organization would bring a much higher degree of clarity for VSQGs if VSQG requirements were organized the same way as SQG and LQG requirements.

§262.14(e): Should this say "may <u>generate</u> hazardous waste in accordance with subpart L" or "may <u>generate and accumulate</u> hazardous waste in accordance with subpart L" instead of "may accumulate hazardous waste in accordance with subpart L"?

§262.15(a)(1) states that leaking containers must be either (1) transferred to a non-leaking container, or (2) transferred and managed in the central accumulation area. While the second option references transferring the waste, it does not specifically state that the waste must be transferred into a non-leaking container prior to moving the waste to central accumulation. Further, neither scenario provides a timeframe for transferring the waste. One State recommends providing more detail for scenario #2 and adding the word "immediately" to both scenarios #1 and #2.

§262.16 states that "A small quantity generator may accumulate hazardous waste on-site without a permit or interim status, and without complying with the independent requirements of parts 124, 264 through 268, and 270 of this chapter…". The exclusion of Part 268 appears to conflict with the regulatory requirement found in §268.7(a), which requires generators to determine if their waste has to be treated before being land disposed. While the requirement to comply with all of Part 268 is included further below, the exclusion referenced in the beginning of §268.16 may confuse some readers.

§262.16(b) introductory paragraph: "conditions for longer accumulation in paragraphs (c) and (d) of this section" should read "…paragraphs (d) and (e) of this section". §262.16(b)(2)(iv) citation to "paragraph (a)(2)(i) of this section" should read "paragraph (b)(2)(i) of this section."

§262.16(b)(3)(iii) citation to "(a)(3)(iv)" should be "(b)(3)(iv)." §262.16(b)(3)(iii)(C) citation to "(a)(3)(ii)(C)" should be "(b)(3)(ii)(C)." §262.16(b)(3)(iii)(E), cross-reference to §265.15(c) is unnecessary; the text at §265.15(c) is very short and should be included here instead of being referenced. §262.16(b)(3)(iv) citation to (a)(3)(iii)(A) through (E) should be (b)(3)(iii)(A) through (E).

§262.16(b)(8)(iii): One State supports the requirement for documentation of weekly inspections by generators, so that having complied with this requirement is inspectable by regulators. This State also suggests adding documentation of test/inspect/maintaining emergency equipment, so that compliance is inspectable by regulators.

§262.16(d) reference to paragraph (a) should be paragraph (b).

§262.16(f) reference to paragraphs (a), (c), and (d) should be (b), (c), and (d).

§262.17(c)(4)(i)(B) or (c)(4)(iii) may be missing provisions for tracking accumulation start date for tanks.

§261.33(e) introductory paragraph, did EPA intend to remove the comment and "These wastes and their corresponding EPA Hazardous Waste Numbers are:"?
§261.33(f) introductory paragraph, did EPA intend to remove "unless otherwise designated" (it appears that some wastes in the table are otherwise designated), the comment, and "These wastes and their corresponding EPA Hazardous Waste Numbers are:"?

§262.41(a) In the proposed text, the first mention of "reporting year" occurs before it is defined as the calendar year previous to the even numbered year when the report is due. This could be written more clearly for someone new to the regulations. Suggestion is: replace "A generator

who is a large quantity generator for at least one month of the reporting year must complete and submit EPA form 8700–13 to the Regional Administrator by March 1 of each even numbered year for all hazardous wastes generated during the previous calendar year." with "A generator who is a large quantity generator for at least one month of an odd numbered year (reporting year) must complete and submit EPA form 8700–13 to the Regional Administrator by March 1 of the following even numbered year for all hazardous wastes generated during the reporting year." This also lines up with the implication that applicability of the requirement to submit a biennial report should be re-determined for every generator (based on monthly generator status) at the end of every odd numbered year by changing "each even numbered year" to "the following even numbered year".

§262.44 refers to §262.40(c), which is proposed for elimination. Correct reference, possibly replace with reference to §262.11(e); see above regarding VIII.B. Add reference to §262.42(c). §262.44 references §262.42(b) exception reporting but not section §262.40(b). §262.42(b) specifies reporting requirements but not the requirement to retain records for 3 years. This is covered by §262.40(b), which SQGs are not asked to comply with because it also includes retention of biennial reports.

One State believes §262.40(b) should also apply to SQGs (although, clearly, since they are not required to submit BRs, this part of it would not apply).

§262.253: One State supports the requirement for documentation of weekly inspections by generators, so that having complied with this requirement is inspectable by regulators. This State suggests adding documentation of test/inspect/maintaining emergency equipment, so that compliance may be monitored by regulators.

One State recommends that "unless excluded by the responding agency (Local Emergency Planning Committee, Fire Department, local emergency responders, etc.) in the written agreement" be inserted into the third sentence of §262.262(b) so that it read as follows:

> *The executive summary must include the following elements unless excluded by the responding agency (Local Emergency Planning Committee, Fire Department, local emergency responders, etc.) in the written agreement:*

The recommended insert allows the responding agency (Local Emergency Planning Committee, Fire Department, local emergency responders, etc.) to determine if there may be some information that they do not need in the executive summary.

One State had an additional suggestion: Consider requiring transfer facilities to notify separately from transporters. Currently, transfer facilities are setting up operations managing large amounts of hazardous waste without the States knowing their location. Regulators cannot distinguish between a transporter that never removes waste from a truck from a transfer facility that stores waste for 10-days with a greater chance of releases.

Typographical Changes

Page 57922 - Last Paragraph: The acronym for Large Quantity Generators (LQGs) was misspelled.

Page 57923 - Top Right Column: The reference to §261.5(e)(3) is incorrect. The correct citation is §261.5(f)(3).

Page 57928 - The first sentence of the first full paragraph in column 3 begins, as follows: "With the promulgation of the SQG regulations in 1986…". The correct reference should be to CESQGs as opposed to SQGs.

Page 57992 - §262.10(a)(1)(i)(H): This section is missing the word "and" and has an incorrect order of the applicable part titles. Suggested correction as "(H) Part 262 subpart E and subpart F – Exports and imports of hazardous waste;"

Page 57992 - §262.10(a)(1)(ii)(G): This section is missing the word "and" and has an incorrect order of the applicable part titles. Suggested correction as "(H) Part 262 subpart E and subpart F – Exports and imports of hazardous waste;"

Page 57992 - §262.10(g)(1): Suggest adding word "independent" within "applicable requirement" to read as "…generator's violation of an applicable independent requirement in 40 CFR …". This addition would make understanding the section easier for the regulated community and would also mirror it to language elsewhere in §262.10(a) as well as §262.10(g)(2).

Page 57993 - §262.11(e): Title section simply "Recordkeeping" if accept argument to extend waste determination recordkeeping requirement to VSQG.

Page 57994 - §262.14(a): Appears to be a comma, necessary for understanding, missing after the word below in the fifth line, as "…except the paragraphs of §262.11 specified below, or the requirements of parts 124…"

Page 57994 - §262.14(a)(2): Suggested re-write as "(2) The very small quantity generator complies with §262.11(a) through (e) of this chapter;"

Page 57995 - §262.16(b): Typo in the cross-references to the §262.16 time extension sections. Currently reads as "…for longer accumulation in paragraphs (c) and (d) of this section." Should read "…for longer accumulation in paragraphs (d) and (e) of this section."

Page 57996 - §262.16(b)(2)(iv) and Page 57999 - §262.17(a)(1)(v): Suggest defining "at least weekly" within the regulation text to a more definitive "every seven days" or "every calendar week", in order to avoid confusion and varying interpretations across States and regions on what is "weekly". Also, add the word "record" or "document", such as is proposed in section §264.1101(c)(4), as a better example of definitive language for weekly inspections.

Page 57996 - §262.16(b)(2)(v): Typo for cross-reference for section on what to do if leaking. Should be paragraph (**b**)(2)(i), not (a)(2)(i).

Page 58002 - §262.18(d)(i): This doesn't follow numbering convention. Should be §262.18(d)(1). *(Lower case i v. numeral 1).*