



HAZARDOUS WASTE GENERATOR REGULATORY UPDATE



Tammy L. Helminski

Michigan Chamber Webinar

May 8, 2018

Michigan Hazardous Waste Updates

- MDEQ has initiated Amendment 12 to the Part 111 rules.

2018-012 EQ

Hazardous Waste Management

(Environmental Quality , Waste Management & Radiological Protection Division)

The purpose of the rules is to maintain federal authorization to administer the state's Hazardous Waste Management Program under Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), in lieu of the federal Hazardous Waste Management Program under the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (RCRA); to improve the overall quality of the rules in terms of clarification of existing requirements and areas of program coverage; and to reduce some of the burdens on the regulated community by providing streamlined and flexible requirements. The rules address federal revisions required to maintain authorization and those that authorized states have the option of incorporating into their rules for consistency purposes. The revisions address generator improvement, import/export, and electronic manifesting requirements. The rules also address revisions based on DEQ and public recommendations relating to hazardous waste identification and listing, aerosol cans as universal waste, adoption by reference updates, and typographical corrections.

RCRA

Hazardous Waste Generator Improvements Rule

- Signed October 28, 2016; published in the Federal Register on November 28, 2016; effective federally May 31, 2017
(<https://www.epa.gov/hwgenerators/final-rule-hazardous-waste-generator-improvements>).
- First major changes to generator requirements
 - Reorganizes regulations, changes/adds nomenclature, adds flexibility, changes to satellite accumulation area requirements, additional emergency preparedness requirements, etc.

RCRA

Hazardous Waste Generator Improvements Rule, cont.

- Reorganization

Provision	Existing Citation	Final Citation
Generator Category Determination	§ 261.5(c)-(e)	§ 262.13
VSQG Provisions	§ 261.5(a), (b), (f)-(g)	§ 262.14
Satellite Accumulation Area Provisions	§ 262.34(c)	§ 262.15
SQG Provisions	§ 262.34(d)-(f)	§ 262.16
LQG Provisions	§ 262.34(a), (b), (g)-(i), (m)	§ 262.17

As part of this reorganization, the Agency made conforming changes to citations that reference § 261.5 and § 262.34

Source: EPA webinar January 9, 2017; available at:

<https://clu-in.org/conf/tio/hwgenerators/slides/Generator-Improvements-Final-Rule.pdf>

RCRA

Hazardous Waste Generator Improvements Rule, cont.

- Nomenclature
 - CESQG now VSQG
 - “Independent Requirement” means a requirement of part 262 that states an event, action, or standard that must occur or be met; and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption from storage facility permit, interim status, and operating requirements under §§ 262.14, 262.15, 262.16, 262.17, or subpart K or subpart L of this part. 40 CFR § 262.1.
 - “Condition for Exemption” means any requirement in §§ 262.14, 262.15, 262.16, 262.17, 262.70, or subpart K or subpart L of this part that states an event, action, or standard that must occur or be met in order to obtain an exemption from any applicable requirement in parts 124, 264 through 268, and 270 of this chapter, or from any requirement for notification under section 3010 of RCRA. 40 CFR § 262.1.
 - Being challenged by industry because of the potentially harsh penalties that could result from failure to meet a condition for exemption. In June 2017, parties asked D.C. Circuit for stay while try to reach settlement.

RCRA

Hazardous Waste Generator Improvements Rule, cont.

- Flexibility
 - Episodic Generation: VSQGs (and SQGs) can maintain their smaller status if there is only episodic generation of larger quantities, subject to certain conditions. One allowed per year, unless petition for one additional event. 40 CFR § 262.230-233.
 - Consolidation: under certain circumstances, VSQGs can send waste to an LQG facility under control of the same person to be consolidated before the waste is sent to a TSDF. 40 CFR § 262.14(a)(5)

RCRA

Hazardous Waste Generator Improvements Rule, cont.

- Satellite Accumulation Areas
 - Clarifies that there are exceptions to when container must be closed (*e.g.* when adding or removing waste). 40 CFR § 262.15(a)(4)
 - Requires containers of incompatible wastes be separated or protected from each other “by any practical means.” 40 CFR § 262.15(a)(3)(iii)
 - Amounts in excess of those allowed to be accumulated must be removed from satellite area within 3 calendar days. 40 CFR § 262.15(a)(6)

RCRA

Hazardous Waste Generator Improvements Rule, cont.

- Emergency Preparedness
 - SAAs must meet preparedness and prevention regulations (*e.g.* response equipment available, tested, and maintained). 40 CFR § 262.15(a)(7),(8); 40 CFR § 262.16(b)(8),(9)
 - LQGs that first become subject to provisions after May 30, 2017 must submit a “quick reference guide” to their LEPC. 40 CFR § 262.262(b)

RCRA

Hazardous Waste Generator Improvements Rule, cont.

- Carefully review other requirements (e.g. “No Smoking” signs for generators near ignitable or reactive wastes)
- EPA’s summary table at: <https://www.epa.gov/hwgenerators/hazardous-waste-generator-regulatory-summary>

◆ Requirement	Very Small ◆ Quantity Generators	◆ Small Quantity Generators	◆ Large Quantity Generators
Quantity Limits The amount of hazardous waste generated per month determines how a generator is categorized and what regulations must be complied with.	≤ 100 kg/month, and ≤ 1 kg/month of acute hazardous waste, and ≤ 100 kg/month of acute spill residue or soil §260.10	>100 and <1,000 kg/month §260.10	≥ 1,000 kg/month, or >1 kg/month of acute hazardous waste, or >100 kg/month of acute spill residue or soil §260.10
EPA ID Number Acquire a unique EPA identification number that identifies generators by site.	Not required	Required §262.18	Required §262.18

RCRA

Hazardous Waste Generator Improvements Rule, cont.

- State adoption depends on stringency of the rule
 - More stringent:
 - SQG re-notification
 - Identifying hazards of wastes being accumulated and labeling
 - Notification of closure
 - Closure as a landfill for LQGs accumulating hazardous wastes in containers that cannot meet closure performance standards
 - Biennial reporting for whole year, not just months the generator was an LQG
 - Biennial reporting for recyclers who don't store prior to recycling
 - Quick Reference guide for contingency plans
 - Less stringent:
 - VSQG consolidation
 - Episodic generation
 - Waiver from 50-foot rule

Source: EPA webinar January 9, 2017; available at:

<https://clu-in.org/conf/tio/hwgenerators/slides/Generator-Improvements-Final-Rule.pdf>

Hazardous Waste Generator Improvements Rule - Michigan

- There are two areas where the proposed revisions are more stringent than the federal regulation:
- State-only listed wastes
- Generator labelling
 - “The federal Program has been amended to only require the use of the words “Hazardous Waste” and a caution indicator on hazardous waste containers/tanks until prior to shipment when they must also include the applicable hazardous waste number(s). This represents a departure from the old federal requirements and the existing long-standing state requirements. In an effort to bridge the old and the new and the state and federal Programs, and provide inspectors with the information necessary to do their jobs, the rules continue to require that labels include the hazardous waste number, except for satellite accumulation areas when the hazardous waste name may be used in lieu of the number.”

https://dmbinternet.state.mi.us/DMB/ORRDocs/RFR/1792_2018-012EQ_rfr.pdf

Import/Export

- Import/Export Rule
 - Effective 12/31/16
 - Automated Export System Filing Compliance date is 12/31/17
 - Starting on December 31, 2017, all U.S. exporters of manifested hazardous waste, universal waste, and spent lead-acid batteries for recycling or disposal, and all exporters of cathode ray tubes for recycling were required to file EPA information in the AES
 - CRT exporting for recycling has a 12/31/18 AES compliance date

E-Manifest

- Implementation of “Hazardous Waste Electronic Manifest Establishment Act”
 - Final Rule regarding implementation effective 8/6/14
 - EPA final user fee rule in December 2017; effective June 30, 2018
 - No fees to MDEQ after June 29, 2018; fees will now go to EPA
 - “Fees shall be assessed on a per manifest basis” for certain manifest submission transactions. 40 C.F.R. 265.1311
 - The user fee calculation is at 40 C.F.R. 265.1312.
 - Revised at two-year intervals.

Hazardous Waste Identification and Listing

- Federal Definition of Solid Waste
- Michigan-only listed wastes

Federal Definition of Solid Waste

- Finalized December 10, 2014; published in the Federal Register on January 13, 2015; effective federally on July 13, 2015. (<https://www.epa.gov/hwgenerators/final-rule-2015-definition-solid-waste-dsw>.)
- Focuses on third-party recycling because EPA identified mismanagement by third-party hazardous materials recyclers as potential environmental justice issue.
- “Verified recycler” provision replaced transfer based exclusion and requires that all hazardous materials recyclers operating under this provision have RCRA permits, or obtain a variance prior to operating under the exclusion. 40 CFR § 261.4(a)(24).

RCRA

Definition of Solid Waste, cont.

- Established four mandatory legitimacy factors to combat “sham recycling:”
 - (1) the hazardous secondary material must provide a useful contribution to the recycling process or product;
 - (2) the recycling process must produce a valuable product or intermediate;
 - (3) the hazardous secondary material must be managed as a valuable commodity; and
 - (4) the recycled product must be comparable to a legitimate product or intermediate.

40 CFR § 260.43.

RCRA

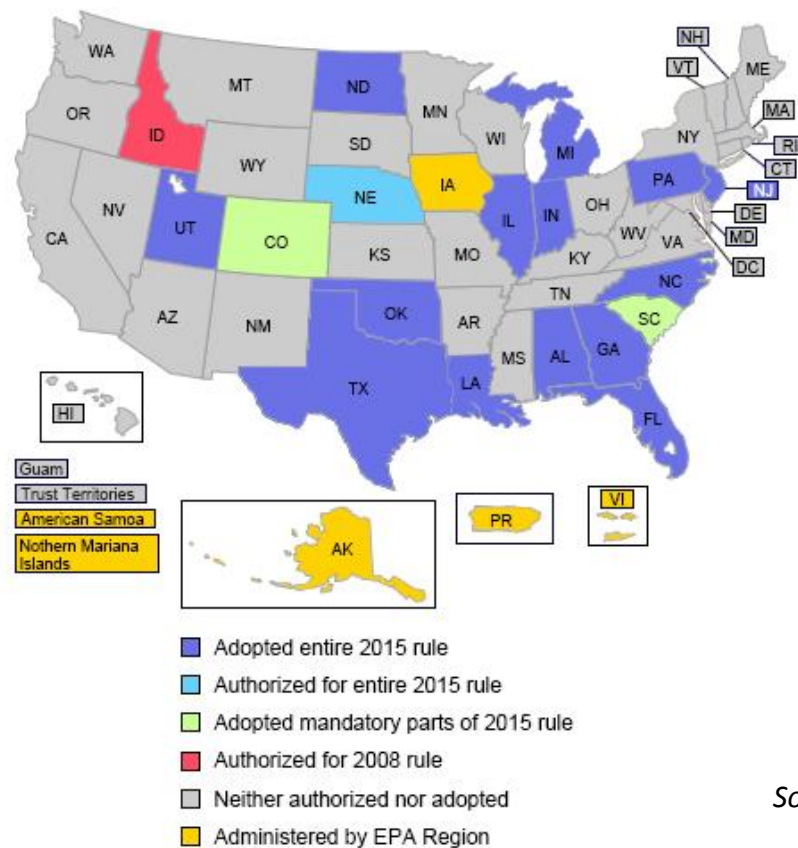
Definition of Solid Waste, cont.

- Challenged by industry with a decision by D.C. Circuit on July 7, 2017
- Struck down verified recycler provision and reinstated prior 2008 transfer-based exclusion (“reasonable efforts” to ensure materials properly handled by third-parties)
- Upheld legitimacy criteria 3 (managed as valuable commodity)
- Struck down legitimacy criteria 4 (comparable to legitimate product or intermediate)
- March 6, 2018 rehearing decision clarified that 2008 criteria 4 was in-place (requires toxics along for the ride be “considered” in determining if recyclable material a solid waste)

RCRA

Definition of Solid Waste, cont.

- Status of state adoption



Source: www.epa.gov

Michigan-Only Listed Wastes

- Approximately 50 are proposed for deletion
- Only 122 “S” and “U” codes remain.
- “The DEQ intends to continue this process until it has reviewed all of the remaining wastes. Given the number of remaining wastes and the scope of the review necessary for each waste, this process is likely to span several sets of rule revisions.”

https://dmbinternet.state.mi.us/DMB/ORRDocs/RFR/1792_2018-012EQ_rfr.pdf

Aerosol Cans – Universal Waste

- Federal Rule – March 16, 2018
 - Comments due by May 15, 2018
 - “The Agency is proposing that on balance, these wastes are appropriate for inclusion onto the federal list of universal wastes for management under part 273. EPA believes that adding aerosol cans to the universal waste rule would make collection and transportation of this waste to an appropriate facility easier and, therefore, will help facilitate recycling and reduce the amount of aerosol cans disposed of in municipal landfills.” 83 Fed. Reg. 11658

Aerosol Cans – Universal Waste

- State rule
- Need incompatible cans separated
- Can “process” aerosol cans if:
 - Prevent fire or explosion
 - On impervious surface
 - Ensure proper operation (written SOP and training)
 - Give notification to MDEQ that conducting this processing

Michigan Rulemaking

- Expect JCAR process in the fall
- Anticipate effective by end of calendar year

Disclaimer

- This article should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.