

40 CFR HAZARDOUS WASTE DETERMINATION AND GENERATOR CATEGORIES

NJDEP

HW COMPLIANCE & ENFORCEMENT

OCTOBER 2018

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REQUIREMENTS FOR ALL GENERATORS

- General Requirements
- HW Determination & Recordkeeping - § 262.11
- Counting and HW Generator Categories - § 262.13
- Mixing HW with Solid Waste - § 262.13(f)

GENERAL REQUIREMENTS

§ 260.10 New Definitions

- Central Accumulation Area
- Acute Hazardous Waste
- Non-Acute Hazardous Waste
- Large Quantity Generator
- Small Quantity Generator
- Very Small Quantity Generator

GENERAL REQUIREMENTS

Independent Requirements

- § 262.10(a)(1) A person who generates a hazardous waste as defined by 40 CFR part 261 is subject to all the applicable independent requirements in the subparts and sections listed.
 - (i) VSQG
 - (ii) SQG
 - (iii) LQG

GENERAL REQUIREMENTS

Conditional Requirements

- § 262.10(a)(2) A generator that accumulates hazardous waste on site is a person that stores hazardous waste; such generator is subject to the applicable requirements of parts 124, 264 through 267, and 270 of this chapter and section 3010 of RCRA, unless it is one of the following:
 - (i) A VSQG that meets the conditions for exemption in §262.14;
 - (ii) An SQG that meets the conditions for exemption in §§262.15 and 262.16; or
 - (iii) An LQG that meets the conditions for exemption in §§262.15 and 262.17.

GENERAL REQUIREMENTS

Authorized Facility Requirement

- § 262.10(a)(3) A generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in §260.10 of this chapter, or not otherwise authorized to receive the generator's hazardous waste.

GENERAL REQUIREMENTS

Liquids in Landfills Prohibition

- **VSQG - § 262.14(b)** 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.
- **SQG & LQG - § 262.35** 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. Prior to disposal in a hazardous waste landfill, liquids must meet additional requirements as specified in §§264.314 and 265.314.

HAZARDOUS WASTE DETERMINATION AND RECORDKEEPING

§ 262.11

§ 262.11 – HW DETERMINATION

- HW determinations must be accurate to ensure wastes are properly managed according to applicable RCRA regulations.

§ 262.11(a) – WHEN TO DETERMINE

- The hazardous waste determination must be made:
 - at the point of waste generation,
 - before any dilution, mixing, or other alteration of the waste occurs,
 - and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the RCRA classification of the waste may change.

§ 262.11(b) - DETERMINE IF EXCLUDED

- **First**, a person must determine whether the solid waste is excluded from regulation under 40 CFR 261.4
- 40 CFR 261.4 has three sections that exclude or exempt certain secondary materials from being either a SW or HW*
 - 40 CFR 261.4(a) identifies secondary materials that are not SW
 - 40 CFR 261.4(b) identifies SW but are not HW
 - 40 CFR 261.4(c) identifies HW which are exempted from certain regulations until the HW exits the unit(s) in which it was generated

*This language has not changed

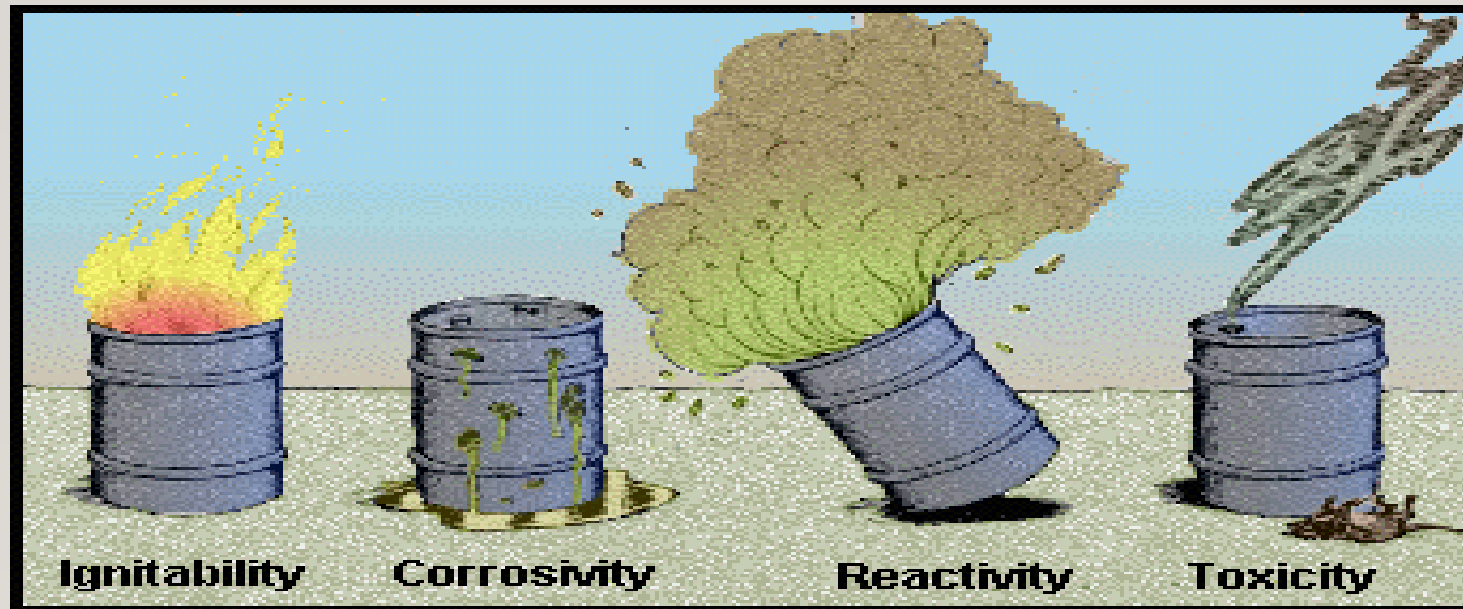


§ 262.11(c) – DETERMINE IF LISTED

- If waste is not excluded, then the person must use knowledge of the waste to determine if the waste meets any of the listing descriptions under subpart D of 40 CFR part 261.
- Acceptable knowledge may include:
 - waste origin
 - composition
 - the process producing the waste
 - feedstock, and
 - other reliable and relevant information (e.g., regulatory language of the listing, regulatory intent of the original listing as evidenced by Federal Register notices, background documents, etc.)
- If the waste is listed, a delisting petition may be filed under 40 CFR 260.20 and 260.22 to demonstrate to that the waste from this particular site or operation is not a hazardous waste.

§ 262.11(d) – DETERMINE IF CHARACTERISTIC

- There are four hazardous waste characteristics



§ 262.11(d) – DETERMINE IF CHARACTERISTIC USING KNOWLEDGE OR TESTING

- **Then**, the person must also determine whether the waste exhibits one or more hazardous characteristics as identified in subpart C of 40 CFR part 261 by following the procedures in paragraph (d)(1) or (2) of this section or a combination of both.
- **NOTE**: Even if the waste is listed, a generator must still determine if the waste exhibits characteristics to comply with LDR (part 268).

§ 262.11(d)(1) – DETERMINE IF CHARACTERISTIC USING KNOWLEDGE

- The person must apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste.
- Acceptable knowledge may include:
 - Process knowledge (e.g., information about chemical feedstocks and other inputs to the production process);
 - Knowledge of products, by-products, and intermediates produced by the manufacturing process;
 - Chemical or physical characterization of wastes;

§ 262.11(d)(1) – ACCEPTABLE KNOWLEDGE (CONT.)

- Information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste;
- Testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents.
- A test other than a test method set forth in subpart C of 40 CFR part 261, or an equivalent test method approved by the Administrator under 40 CFR 260.21, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste.

§ 262.11(d)(2) – DETERMINE IF CHARACTERISTIC USING TESTING

- When available knowledge is inadequate to make an accurate determination, the a person must test the waste according to the applicable methods set forth in subpart C of 40 CFR part 261 or according to an equivalent method approved under 40 CFR 260.21 and in accordance with the following:
 - (i) Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at 40 CFR 260.10.
 - (ii) Where a test method is specified in subpart C of 40 CFR part 261, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

§ 262.11(e) – EXCLUSIONS OR RESTRICTIONS FOR SPECIFIC WASTES

- If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for other possible exclusions or restrictions pertaining to management of the specific waste.*

* This language has not changed

§ 262.11(f) – RECORDKEEPING FOR SQGs & LQGs

- A SQG or LQG must maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by 40 CFR 261.3.
- Records must be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

NOTE: Basic recordkeeping requirement copied from existing 262.40(c)

§ 262.11(f) – RECORDKEEPING

- The records must include, but are not limited to, the following types of information:
 - The results of any tests, sampling, waste analyses, or other determinations made in accordance with this section;
 - Records documenting the tests, sampling, and analytical methods used to demonstrate 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 §262.11(d)(1).

§ 262.11(g) – RCRA WASTE CODES

- If the waste is determined to be hazardous, SQGs and LQGs must identify all applicable EPA hazardous waste numbers (EPA hazardous waste codes) in subparts C and D of part 261 and mark RCRA waste codes on containers prior to sending hazardous waste off site according to §262.32.

GENERATOR CATEGORY DETERMINATION § 262.13

§ 262.13 – GENERATOR CATEGORY DETERMINATION

- A generator must determine its generator category
- The category is based on the amount of hazardous waste that is generated in a calendar month.
- A generator's category can change from month to month.

§ 262.13 – DETERMINE GENERATOR CATEGORY

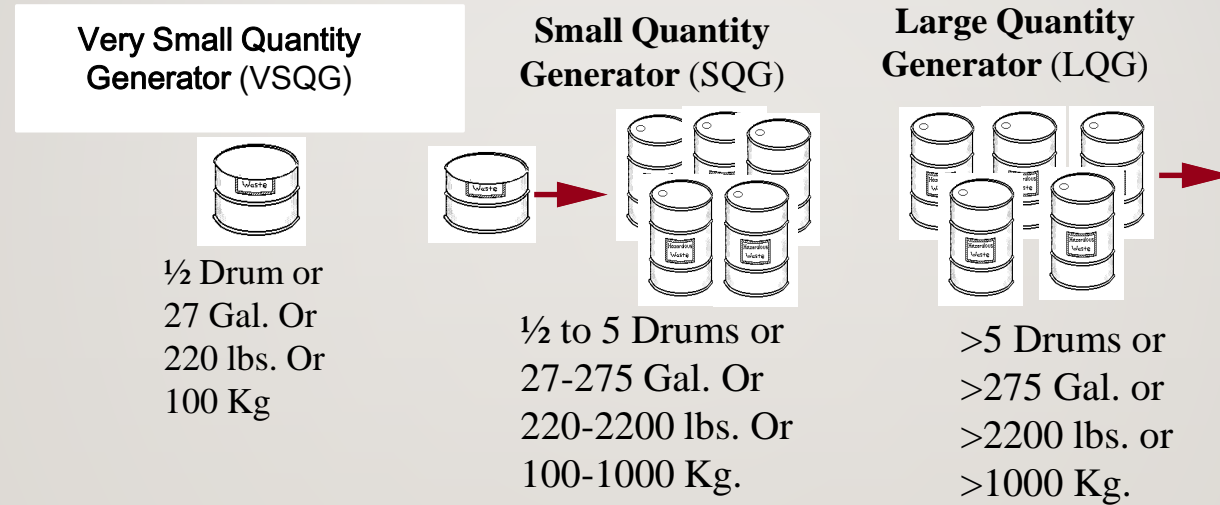
- Different levels of regulation for facilities that generate different volumes of hazardous waste on a monthly basis
 - Three categories of Generators:
 - Very small quantity generators (VSQGs) – renamed from “conditionally exempt small quantity generators (CESQGs)”
 - Small quantity generators (SQGs)
 - Large quantity generators (LQGs)

HAZARDOUS WASTE COUNTING

- **§ 262.13(a)**: Basic procedures for determining generator category if generating only non-acute hazardous waste or only acute hazardous waste
- **§ 262.13(b)**: Procedures for determining generator category if generating a combination of acute and non-acute hazardous waste
- **§ 262.13(c) & (d)**: Those materials that do not need to be included when counting hazardous waste
 - Existing provisions being moved from § 261.5 (c) & (d) + hazardous waste from an episodic event
- **§ 262.13(e)**: The rules that apply to the generator are based on their determined category

§ 262.13(a) – DETERMINING CATEGORY IF YOU GENERATE NON-ACUTE WASTE ONLY

To determine your generator category, count all waste generated in a calendar month:



Key: 55 Gallon Drum = 440 lbs. = 200 Kg.

§ 262.13(a) – DETERMINING CATEGORY IF YOU GENERATE ACUTE WASTE ONLY

- ≤ 1 kg (or 2.2 lbs) per month you are a VSQG
- > 1 kg (or 2.2 lbs) per month you are a LQG

NOTE: SQGs and VSQGs can generate ≤ 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of this chapter.

HAZARDOUS WASTE COUNTING

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TABLE 1 to §262.13 – Generator Categories Based on Quantity of Waste Generated in a Calendar Month

Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from a cleanup of acute hazardous waste generated in a calendar month	Generator Category
> 1 kg	Any amount	Any amount	Large quantity generator
Any amount	≥ 1,000 kg	Any amount	Large quantity generator
Any amount	Any amount	> 100 kg	Large quantity generator
≤ 1 kg	> 100 kg and < 1,000 kg	≤ 100 kg	Small quantity generator
≤ 1 kg	≤ 100 kg	≤ 100 kg	Very small quantity generator

§ 262.13(b) – GENERATING ACUTE AND NON-ACUTE HAZARDOUS WASTE IN THE SAME MONTH

- Before the final generator rule, EPA had issued contradictory guidance documents on whether a generator could be one category of generator for acute waste and another for non-acute waste in the same month.
- The Generator final rule provisions make it clear that acute hazardous waste, non-acute hazardous waste, and residues of clean ups of hazardous waste are all considered in making a generator's monthly category determination.

§ 262.13(c) – MATERIALS THAT DO NOT NEED TO BE COUNTED

When making the monthly quantity-based determinations required by this part, the generator must include all hazardous waste that it generates, except hazardous waste that:

- (1) Is exempt from regulation under 40 CFR 261.4(c) through (f), 261.6(a)(3), 261.7(a)(1), or 261.8;
- (2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 40 CFR 260.10;
- (3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under 40 CFR 261.6(c)(2);
- (4) Is used oil managed under the requirements of 40 CFR 261.6(a)(4) and 40 CFR part 279;
- (5) Is spent lead-acid batteries managed under the requirements of 40 CFR part 266 subpart G;
- (6) Is universal waste managed under 40 CFR 261.9 and 40 CFR part 273;
- (7) Is a hazardous waste that is an unused commercial chemical product (listed in 40 CFR part 261 subpart D or exhibiting one or more characteristics in 40 CFR part 261 subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to §262.213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in §262.200; or
- (8) Is managed as part of an episodic event in compliance with the conditions of subpart L of this part

§ 262.13(d) – MATERIALS THAT DO NOT NEED TO BE COUNTED

In determining the quantity of hazardous waste generated in a calendar month, a generator need not include:

- (1) Hazardous waste when it is removed from on-site accumulation, so long as the hazardous waste was previously counted once;
- (2) Hazardous waste generated by on-site treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once; and
- (3) Hazardous waste spent materials that are generated, reclaimed, and subsequently reused on site, so long as such spent materials have been previously counted once.

§ 262.13(e) – GENERATOR MUST MEET RULES FOR APPLICABLE CATEGORY

- Based on the generator category as determined under this section, the generator must meet the applicable independent requirements listed in §262.10. A generator's category also determines which of the provisions of §§262.14, 262.15, 262.16 or 262.17 must be met to obtain an exemption from the storage facility permit, interim status, and operating requirements when accumulating hazardous waste.

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