



EPA's Hazardous Waste Generator Improvement Rule: Five Changes to the Satellite Accumulation Rule

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In 2016, EPA published the long-anticipated Hazardous Waste Generator Improvement Rule (HWGIR) updating requirements for generators of hazardous waste. The HWGIR also clarifies EPA policies governing accumulation of hazardous waste in satellite accumulation areas (SAA). Because many states have now adopted the HWGIR into their state hazardous waste regulations, now is a good time for facilities in those states to audit onsite SAAs to be sure the correct hazardous waste practices are being followed. And for facilities in states that have not yet adopted the HWGIR, now is a good time to begin preparing for changes to SAA requirements.

Background on Satellite Accumulation Area Rule

A generator of hazardous waste must obtain a permit to treat, store, or dispose of hazardous wastes. Fortunately, there are a number of exceptions to the permit requirements, and as a result most generators fall outside of the permitting scheme.

One widely-used exception is the satellite accumulation area rule (?SAA Rule?). Under it, generators may accumulate hazardous waste in containers at or near the point of generation without obtaining a hazardous waste storage permit. 40 CFR 262.15(a). The SAA Rule applies, however, only if the facility does not accumulate more than 55 gallons of hazardous waste and/or one quart/one pound of acute hazardous waste and the SAA container is in good condition, remains under the control of an operator, is labeled ?Hazardous Waste,? and stays closed except to add or remove wastes. The HWGIR includes changes to the existing SAA Rule and implementing policies. For simplicity, these changes will be referred to herein as the ?New SAA Rule.?

New Satellite Accumulation Area Rule

A stated objective of the HWGIR requirements is to close gaps in regulations and strengthen EPA oversight of hazardous waste management practices. The New SAA Rule does just that by adding five notable changes to prior SAA policies.

Change No. 1: Incompatible Wastes

While previously implied, placement of incompatible wastes in the same SAA container is now regulated. The following restrictions were added by the New SAA Rule to ensure incompatible wastes are not a threat to employees or the environment in SAAs:

- Generators are expressly prohibited from accumulating incompatible hazardous wastes in the same SAA container;
- All SAA containers must be "washed" if subsequently they will be used to hold incompatible waste, although the nature and scope of washing is not detailed; and
- A dike, berm, or wall must be installed to separate incompatible waste units in a single SAA.

Change No. 2: Exceptions to Closed Containers

The previous SAA Rule required SAA containers to be closed, except to add or remove hazardous wastes. This is also the case under the New SAA Rule. However, under the New SAA Rule, a SAA container may be opened for "temporary venting" when necessary for "proper operation of equipment" or to "prevent dangerous conditions" such as pressure-builds. This flexibility does not apply to containers in central accumulation areas (CAA).

Change No. 3: Three Calendar Days

Once the amount of hazardous waste accumulated in a SAA exceeds the volume caps of 55 gallons of non-acute hazardous waste or one quart/one pound of acute hazardous waste, existing regulations allow the generator "three days" to comply with a panoply of hazardous waste storage container requirements (inspections, labels, berms, alarms, training, preparedness/prevention plans, and contingency plans). Over the years, EPA has provided a myriad of guidance on what is meant by "three days." The New SAA Rule preamble clarifies how the Agency will enforce the requirement going forward:

- "Three days" now means "three consecutive calendar days," not three business or work days;
- No relief from counting days is provided just because hazardous waste is not being generated at the SAA or the facility is not operating;
- "Three consecutive calendar days" is not to be measured in hours, and as a result the SAA generator may actually have less than 72 hours to comply; and
- Full hazardous waste storage container requirements are only triggered for "excessive wastes," which are defined as that portion of SAA hazardous wastes exceeding regulatory caps.

Because this is a clarification of an existing requirement, it applies immediately in all states, including those that have not yet adopted the HWGIR.

Change No. 4: Reactive Hazardous Waste

The preamble to the New SAA Rule revokes prior guidance on storing reactive hazardous waste at a SAA. Under the prior guidance, a SAA generator could elect to accumulate reactive hazardous waste in a separate, explosion-proof room and still comply with the requirement that the SAA be "at or near the point of generation" - - thereby staying within the parameters of the SAA exception. The preamble to the New SAA Rule vacated this option by stating that an area used for the accumulation of reactive wastes away from the point of generation should be managed as a CAA, not an SAA. However, the preamble also indicates that generators may move a container of reactive hazardous waste from an SAA to a CAA for storage and then back to the SAA for further accumulation of reactive wastes. Employee training and recordkeeping are critical to successfully navigating this option.

Because this change revokes prior guidance, it applies immediately in all states, including those that have not yet adopted the HWGIR.

Change No. 5: Control of an Operator

The existing SAA Rule, as well as the New SAA Rule, require all SAAs to be "under the control of an operator." EPA used the preamble to the New SAA Rule to clarify what is meant by that phrase. The clarification indicates that:

- The operator must have a regular presence in the SAA and be able to control accumulation of hazardous waste;
- Control over access to the area, building, or room in which a SAA is located is not necessarily required; and
- There can be more than one operator serving different functions for each SAA.

Employee training is a key component of ensuring the SAA is under the control of an operator.

Because this change is an interpretation of a requirement in both the existing and New SAA Rule, it applies immediately in all states, including those that have not yet adopted the HWGIR.

Conclusion and Next Steps

The HWGIR, including the New SAA Rule, is effective in Iowa and Alaska where EPA runs the hazardous waste program and in fifteen other states, including Virginia and North Carolina, that have adopted it into their delegated state program. In states with delegated programs that have not yet adopted the HWGIR, it's appropriate for companies to take the following steps now to plan for the new EPA SAA policies at their facilities:

Step No. 1: Audit compliance with the New SAA Rule as compared to existing requirements;

Step No. 2: Upgrade operating records, training, management plans, recordkeeping, and inspection

procedures and be prepared to include notable revisions to SAA requirements, including:

- Management of ?incompatible hazardous waste? in the SAA;
- Use of ?temporary venting? to protect employees without violating open container rules;
- Provide for full compliance with hazardous waste regulations for excess wastes within ?three consecutive calendar days?;
- Evaluation of the proper storage area for reactive waste; and
- Provision of ?operational control?.

Step No. 3: Implement changes under oversight of legal counsel if compliance may become a problem.

81 Federal Register 85732 (November 28, 2016).

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