



Hazardous Waste Generator Improvements Rule Provides Episodic Exceedance Relief

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Generators of hazardous waste risk triggering comprehensive hazardous waste storage permit requirements when unplanned events cause hazardous waste generated onsite to exceed maximum limits for very small quantity generators (VSQG) or small quantity generators (SQG). In 2016, EPA codified the Hazardous Waste Generator Improvements Rule (the “Improvements Rule”), providing a safe harbor for generators from that potential outcome when the excursion is due to a qualifying episodic event. Although the Improvements Rule was issued three years ago, a number of generators still are not aware of this safe harbor.

Hazardous waste requirements for any facility are determined by the generator classification applicable to the operator of the facility. A VSQG is an operator whose facility generates less than 100 kg (about 220 lbs.) of hazardous waste in a calendar month. VSQGs are largely exempt from requirements for storing and managing hazardous waste, except VSQG hazardous waste may be disposed only at a permitted facility. An SQG is an operator whose facility generates more than 100 kg but less than 1,000 kg (about 2,200 lbs.) of hazardous waste in a calendar month. SQGs must comply with most container and storage area requirements applicable to large quantity generators (LQG), but a full-blown contingency plan is not required, and additional time is provided for shipping hazardous waste offsite. To maintain its classification, a VSQG may not accumulate more than 1,000 kg of hazardous waste at any one time, and an SQG may not accumulate more than 6,000 kg of hazardous waste at any one time.

The consequences of exceeding maximum generation and accumulation caps at a VSQG or SQG may be significant. The VSQG must be in immediate compliance with SQG regulations on the day of the exceedance, and a violating SQG must have in place a hazardous waste permit to store the hazardous waste, which often may take months or years to obtain.

EPA attempts to remedy the risk of noncompliance for exceeding generation or accumulation thresholds at a VSQG or SQG in the regulations. The Improvements Rule contains an “episodic event exemption” which protects VSQGs and SQGs from permit requirements in the event of an excursion above

regulatory caps on generation or accumulation of hazardous waste. This exemption, however, comes with a set of qualifying conditions.

An “episodic event” may be planned or unplanned and still qualify for the exemption. According to EPA, a “planned episodic event” is one in which the generator prepares or plans for the additional hazardous waste to be generated as a result of facility operations, such as additional hazardous waste from tank cleanouts, short term projects, and removal of excess or obsolete chemicals in inventory. “Unplanned episodic events” are those where the generator “reasonably did not expect [the event] to occur” and includes by regulation process upsets, product recalls, spills, and “Acts of God.”

A facility’s ability to claim the exemption is not unlimited under the Improvements Rule, however. A VSQG or SQG may request relief only once per year as a matter of right and may file a “written petition” for a second exemption under certain conditions. The petition for a second exemption must include a good faith reason for the second event, the amount of time of the event, and a description of how the waste will be managed.

There are several pre-conditions a VSQG or SQG must satisfy in order to receive relief from a change in a generator classification under the Improvements Rule:

1. The facility must have an EPA RCRA Identification Number (“EPA ID”) or obtain a new one, even though VSQGs are otherwise not required to obtain an EPA ID;
2. Notification to a delegated state or EPA of the episodic event must be submitted 30 days before a planned event or within 24 hours after the unplanned event, as applicable;
3. Accumulation of the excess hazardous waste must comply with “applicable standards” for the proper generator classification, such as container management regulations, labeling, and storage requirements;
4. Containers storing those hazardous wastes accumulated above the threshold must include the phrase “Episodic Hazardous Wastes” on the label, state the “Hazard” for which the additional waste is listed or characterized by use of words or pictogram, and record the date the episodic event began;
5. Manifest requirements for LQGs must be met, and the episodic hazardous wastes must be taken offsite within 60 days to a hazardous waste facility;
6. Records of the qualifying episodic event and destination of episodic hazardous waste must be maintained for three years; and
7. Letters from the implementing agency approving of the exemption must be kept onsite for three years.

In the past, states periodically allowed VSQGs and SQGs to escape more complex hazardous waste management requirements due to an unplanned increase in hazardous wastes generated onsite, but only as a matter of policy and only when coaxed by the generator. Now, the relief is part of EPA’s national regulatory program. Most delegated states have now incorporated it into their hazardous waste management regulations.

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