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COMMENTS OF THE "INDUSTRIAL GENERATORS" on the HAZARDOUS WASTE GENERATOR IMPROVEMENTS PROPOSED RULE

at

80 Federal Register 57918 (September 25, 2015)

THE "INDUSTRIAL GENERATORS" ARE THE FOLLOWING TRADE ASSOCIATIONS AND THEIR MEMBERS:

American Chemistry Council

American Forest & Paper Association

AFPM American Fuel & Petrochemical Manufacturers

American Iron and Steel Institute

AMERICAN WOOD COUNCIL

IPC Association Connecting Electronics Industries

cibo Council of Industrial Boiler Owners

MEMA Motor & Equipment Manufacturers Association The voice for the motor vehicle supplier industry

NOPA National Oilseed Processors Association

RUBBER manufacturers association

The Fertilizer Institute Nourish, Replenish, Grow

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INTRODUCTION AND IDENTIFICATION OF COMMENTERS

Industrial Generators respectfully submit these comments on EPA's proposed rule entitled Hazardous Waste Generator Improvements, 80 FR 57918 (September 25, 2015). The Industrial Generators that are participating in these comments are the following trade associations and their members:

American Chemistry Council

The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. ACC is committed to improved environmental, health, and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $812 billion enterprise and a key element of the nation's economy.

American Forest & Paper Association

The American Forest & Paper Association (AF&PA) serves to advance a sustainable U.S. pulp, paper, packaging, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative - *Better Practices, Better Planet 2020*. The forest products industry accounts for approximately 4 percent of the total U.S. manufacturing GDP, manufactures over $200 billion in products annually, and employs approximately 900,000 men and women. The industry meets a payroll of approximately $50 billion annually and is among the top 10 manufacturing sector employers in 47 states.

American Fuel & Petrochemical Manufacturers

The American Fuel & Petrochemical Manufacturers (AFPM) (formerly known as NPRA, the National Petroleum & Refiners Association) is a national trade association whose members comprise more than 400 companies, including virtually all United States refiners and petrochemical manufacturers. AFPM's members supply consumers with a wide variety of products and services that are used daily in homes and businesses.

American Iron and Steel Institute

AISI serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI also plays a lead role in the development and application of new steels and steelmaking technology. AISI is comprised of 19 member companies, including integrated and electric furnace steelmakers, and approximately 125 associate members who are suppliers to or customers of the steel industry.

American Wood Council

The American Wood Council (AWC) is the voice of North American wood products manufacturing, representing over 75 percent of an industry that provides approximately 400,000 men and women in the United States with family-wage jobs. AWC members make products that are essential to everyday life from a renewable resource that absorbs and sequesters carbon. Staff experts develop state-of-the-art engineering data, technology, and standards for wood products to assure their safe and efficient design, as well as provide information on wood design, green building, and environmental regulations. AWC also advocates for balanced government policies that affect wood products.

Association Connecting Electronics Industries

IPC is a global industry association based in Bannockburn, Ill., dedicated to the competitive excellence and financial success of its 3,700 member companies which represent all facets of the electronics industry, including design, printed board manufacturing, electronics assembly and test. As a member-driven organization and

leading source for industry standards, training, market research and public policy advocacy, IPC supports programs to meet the needs of an estimated $2 trillion global electronics industry. IPC maintains additional offices in Taos, N.M.; Washington, D.C.; Atlanta, Ga.; Stockholm, Sweden; Moscow, Russia; Bangalore and New Delhi, India; Bangkok, Thailand; and Qingdao, Shanghai, Shenzhen, Chengdu, Suzhou and Beijing, China.

Council of Industrial Boiler Owners

The Council of Industrial Boiler Owners ("CIBO") is a trade association of industrial boiler owners, architect-engineers, related equipment manufacturers, and University affiliates representing 20 major industrial sectors. CIBO members have facilities in every region of the country and a representative distribution of almost every type of boiler and fuel combination currently in operation. CIBO was formed in 1978 to promote the exchange of information about issues affecting industrial boilers, including energy and environmental equipment, technology, operations, policies, laws and regulations.

Motor & Equipment Manufacturers Association

The Motor & Equipment Manufacturers Association (MEMA) represents more than 1,000 companies that manufacture motor vehicle systems and parts for use in the light and heavy-duty vehicle original equipment and aftermarket industries. The motor vehicle parts manufacturing industry is the nation's largest direct employer of manufacturing jobs – over 734,000 workers are employed by suppliers in all 50 states. MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), Motor & Equipment Remanufacturers Association (MERA) and Original Equipment Suppliers Association (OESA).

National Oilseed Processors Association

The National Oilseed Processors Association ("NOPA") is a national trade association that represents 12 companies engaged in the production of vegetable meals and vegetable oils from oilseeds, including soybeans. NOPA's member companies

process more than 1.6 billion bushels of oilseeds annually at 63 plants in 19 states, including 57 plants which process soybeans.

Rubber Manufacturers Association

RMA is the national trade association representing tire manufacturing companies that manufacture tires in the United States. RMA member companies include: Bridgestone Americas, Inc.; Continental Tire the Americas, LLC; Cooper Tire & Rubber Company; The Goodyear Tire & Rubber Company; Michelin North America, Inc.; Pirelli Tire North America; Toyo Tire Holdings of Americas Inc. and Yokohama Tire Corporation. RMA's eight member companies operate 30 tire manufacturing plants, employ thousands of Americans and ship over 90 percent of the original equipment ("OE") tires and 80 percent of the replacement tires sold in the United States.

The Fertilizer Institute

The Fertilizer Institute (TFI) represents the nation's fertilizer industry including producers, importers, retailers, wholesalers, and companies that provide services to the fertilizer industry. TFI's members provide nutriesnts that nourish the nation's crops, helping to ensure a stable and reliable food supply.

After the Executive Summary that follows, each comment is presented generally in the order that its respective request for comment appears in the proposed rule. Citations in the comment subheadings are to the new rules that EPA proposes, as opposed to existing sections that are to be deleted or changed.

EXECUTIVE SUMMARY

Industrial Generators support EPA's objective in this proposed rule to clarify and consolidate the requirements that apply to each category of hazardous waste generator regulated under the Resource Conservation and Recovery Act (RCRA) rules. Currently, a generator must wade through multiple CFR parts and sections to find rules applicable to it. In addition, the meaning of many of the rules appear in numerous interpretations EPA has issued over the past 35 years in Federal Register notices, letters, memoranda and other guidance, which are not on, or not easily found on, EPA's website. EPA's proposal to reorganize the generator rules into a few CFR sections and to include in the rules some of the key interpretations should encourage a better understanding among generators of their regulatory obligations, which should enhance compliance and protection of human health and the environment.

In these Comments, Industrial Generators are addressing over 40 specific rules EPA has proposed or topics on which it has requested comment. To appreciate the full position of Industrial Generators, it is important that each of the Specific Comments that follow be reviewed. But in an effort to highlight some proposals we especially support or object to, and at the recognized risk of leaving some out, Industrial Generators note that we support the following proposals as well as others:

1. Allowing very small quantity generators (VSQGs) to send hazardous waste to large quantity generators (LQGs) under the control of the same person and to unrelated LQGs with agency approval. (See Comments #5 and #6);
2. Reduction in personal information of Emergency Coordinators, and identification of them by position instead of name. (See Comments #35 and #36);
3. Allowing emergency response equipment to be centrally located. (See Comment #37);
4. Allowing on-line personnel training. (See Comment #41);

5. Recognizing that there may be conditions when containers in satellite accumulation areas should not be closed. (See Comment #42); and
6. Allowing increased generation of hazardous waste from an episodic event without causing a change in generator status. (See Comment #47).

There are also some proposed rules and topics identified for comments to which Industrial Generators strongly object. One consistent theme in our objections is that EPA is using this proposed rulemaking, which it states is intended to reorganize and clarify existing rules, to impose new burdensome requirements on hazardous waste generators. This is especially troubling because generators of hazardous waste, unlike treatment, storage and disposal facilities (TSDFs), typically do not have the dedicated staff and resources that are needed to be well versed in the applicable regulations and their many nuances. Historically, EPA has recognized that difference between generators and TSDFs and attempted to limit the requirements placed on generators to those that are truly necessary in order to protect human health and the environment. Unfortunately, in this proposed rule, EPA would expand and extend the generator rules in many significant ways without fully considering the cumulative burden that will be placed on generators from these additional rules. EPA should re-evaluate the cumulative effect on generators of the proposed new requirements and limit the new requirements to those that are found to be absolutely necessary to protect human health and the environment.

Most objectionable are the following proposals or requests for comment:

1. EPA should not take the position that a violation of any one of the too-broadly-defined Conditions for Exemption would mean that the generator has violated the requirements that apply to a permitted TSDF or to the next level of generator. Under this interpretation, for example, if a VSQG were to fail to label a drum it sends to an LQG under common control, the VSQG could be considered not only to have violated that new labeling rule, but also to have violated up to the 24 rules that apply to a small quantity generator (SQG) that do not apply to a VSQG (or even more rules

that apply to a permitted TSDF). To avoid this draconian result and to be consistent with RCRA as reflected in 42 U.S.C. §6922, all Conditions for Exemption should be removed and made into independent requirements in the final rule. If EPA insists on maintaining some Conditions for Exemption, the Conditions for Exemption should be limited to just those few criteria that distinguish one category of generator from another, i.e., the amounts of hazardous waste that are generated by each category of generator and the accumulation times allowed for such hazardous waste. EPA should also leave to its enforcement office the discretion on how to charge violations and impose penalties if any one of these more narrowly defined Conditions for Exemption is violated. (See Comment #8).

2. EPA should not adopt the proposed rule that states that the waste determination must be at the *"point of generation"* and *"before any dilution, mixing, or other alteration of the waste,"* because such would contradict several rules and interpretations whereby the waste determination is to be made after *"dilution, mixing, or other alteration of the waste."* (See Comment #10).
3. EPA should not require waste determinations for individual wastewater streams that are comingled in the headworks of a wastewater treatment unit. (See Comment #11).
4. The proposed waste determination information that must be documented and maintained is overly-prescriptive and is more information than is necessary. (See Comment #14).
5. EPA should not require SQGs and LQGs to prepare and retain documentation when a solid waste is determined not to be a hazardous waste. (See Comment #15.A.). Further, EPA should explicitly state in this rule that the waste determination documentation is not required for the many hazardous secondary materials that are excluded from the definition of solid waste, or for the many solid or hazardous wastes that are exempted by rule from the requirement to conduct a hazardous waste determination or to document that determination. (See Comments #15.B. and 15.C.).

6. EPA should not require retention of waste determination documentation until a site closes. (See Comment #18).
7. EPA should not require container labels with the proposed multiple categories of information, but rather should convene all stakeholders to identify the best approach for labeling containers. (See Comment #22).
8. Logs identifying each addition of hazardous wastes into a tank are unnecessary and should not be required. (See Comment #25).
9. EPA should not require generators to notify of closure. (See Comment #30).

The cumulative burden of these objectionable proposed rules, as well as several others discussed in the following Specific Comments, is unreasonable for generators, and has not been justified as being necessary to protect human health and the environment as required by RCRA.

SPECIFIC COMMENTS

1. Definition of "Acute Hazardous Waste" (40 CFR §260.10)

EPA proposes a new definition of "acute hazardous waste" as *"hazardous wastes that meet the listing criteria in §261.11(a)(2) and therefore are either listed in §261.31 of this chapter with the assigned hazard code of (H) or are listed in §261.33(e) of this chapter."* Although Industrial Generators believe it is useful to have a definition in 40 CFR §260.10 of "acute hazardous waste," the proposed definition is misleading with regard to hazardous waste that would carry an acute waste code only by virtue of the mixture or derived-from rules at 40 CFR §261.3(a)(2)(iii) and §261.3(c)(2). Such mixtures and derivatives often will not *"meet the listing criterion in 261.11(a)(2)"* since they will be much less concentrated due to mixing with other less toxic materials, or the toxicity will be greatly reduced or removed through treatment, such as incineration. For example, when a concentrated P-listed acute organic hazardous waste is burned in an incinerator, the ash will still carry the P code under the derived-from rule, but because the organics would be destroyed in the incinerator, the ash would no longer have any

significant toxicity, and if evaluated then, would not "meet the listing criteria in §261.11(a)(2)." Therefore, we suggest that the definition of "acute hazardous waste" be changed to *"hazardous waste that is listed in §261.31 of this chapter with the assigned hazard code (H), or listed in §261.33(e) of this chapter."* This revised definition covers all acute hazardous waste without introducing into the definition the unnecessary and, in some cases, incorrect concept that all hazardous waste with an acute waste code is actually acutely toxic.

2. Definitions of Large Quantity Generator, Small Quantity Generator, and Very Small Quantity Generator (40 CFR §260.10)

Industrial Generators support EPA's plan to change the term "conditionally exempt small quantity generator" to "very small quantity generator," as this will be more intuitive and understandable by the regulated community.

Industrial Generators also support adding definitions to 40 CFR §260.10 for a "large quantity generator," "small quantity generator," and the new definition of a "very small quantity generator." These additions should make it easier for generators, particularly very small and small quantity generators who have limited experience with the RCRA regulations, to understand how their generation is categorized. In particular, we agree that with EPA's clarification at 80 FR 57926/column 3 that a generator cannot have two different generator statuses in any calendar month.

Nonetheless, we believe there is an unintended mistake in the proposed definitions of SQG and VSQG. As proposed, a SQG would have to generate in a calendar month greater than 100 kg but less than 1000 kg of non-acute hazardous waste, and less than or equal to 1 kg of acute hazardous waste, and less than or equal to 100 kg of any residue or contaminated soil, water or other debris resulting from the cleanup of a spill of acute hazardous waste. We assume EPA means that an SQG could generate any one of these types of hazardous waste and also not meet the criteria for an LQG.

Table 1 to proposed 40 CFR § 262.13 reflects the correct generator status under the various generation permutations. We suggest that the final rule simply refer to this Table 1 when defining a VSQG, SQG and LQG in 40 CFR § 260.10.

Finally, we urge EPA to slightly change the threshold for an SQG's generation of non-acute hazardous waste to "greater than 100 kg (220 lbs.) but less than or equal to 1000 kg (2200 lbs.) of non-acute hazardous waste." This change would be consistent with the "less than or equal to" approach in each of the other upper limits in these VSQG and SQG definitions, and therefore, is easier to remember and comply with.

3. Definition of "Central Accumulation Area" (40 CFR §260.10)

EPA should clarify in the final rule that it has used the term "central accumulation area" to distinguish the areas where SQGs and LQGs accumulate hazardous waste generally for up to 180 days and 90 days respectively from satellite accumulation areas or areas where VSQG hazardous waste is accumulated. The term "central accumulation area" might suggest that the area must be centrally located on a plant site, or that there can be only one accumulation area since only one would be geographically central. To address this ambiguity, EPA may want to change the term in the final rule to simply "accumulation area," "generator accumulation area," or some similar term.

4. Clarifications Regarding Mixing of Hazardous Waste for Small Quantity Generators and Very Small Quantity Generators (40 CFR §262.14(b) and §262.16(c))

Industrial Generators support the proposed clarifications regarding when mixtures of hazardous waste and non-hazardous waste will cause exceedance of the SQG and VSQG threshold amounts of hazardous waste generation that demarcate their status.[1]

[1] As noted in Comment 8, however, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

5. Allowing VSQGs to Send Hazardous Waste to LQGs Under the Control of the Same Person (40 CFR §262.14(a)(4)(viii))

Industrial Generators support EPA's objective to allow VSQGs to send their hazardous waste to an LQG under the control of the same person.[2] We are concerned, however, that the proposed language in 40 CFR §262.14(a)(4)(viii) *("[a] large quantity generator under the control of the same person as the very small quantity generator…")* might be interpreted narrowly to mean that both the LQG and the VSQG must be owned by a common parent corporation with the power to direct the policies of the LQG's and VSQG's sites. EPA should make clear that the VSQG can control the LQG, the LQG can control the VSQG, or both the VSQG and LQG can be controlled by another related entity. Thus, the VSQG and LQG sites can belong to the same corporation, one site could be the subsidiary of the other site, or both sites could be owned by a common corporate parent, grandparent, great grandparent, etc.

Please note that when EPA addressed this issue in its recent definition of solid waste rule, EPA concluded that so long as the two entities are *"within the same corporate structure"* hazardous secondary materials that are generated by one corporate entity and reclaimed by another related corporate entity would qualify for the "reclaimed under the control of the generator" exclusion from the definition of solid waste at 40 CFR §261.4(a)(23). See 73 FR at 64726/col. 1. EPA should clarify here that it will interpret proposed 40 CFR §262.14(a)(4)(viii) to extend to a VSQG and an LQG that are *"within the same corporate structure."*

Further, EPA should clarify that, common control for purposes of this new rule can include a situation where the VSQG is a joint venture of the LQG or vice versa, and the joint venture is controlled to a significant extent by the related venture party. For

[2] As noted in Comment 8, however, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

example, it is common in the chemical industry for a company to create joint ventures for particular production operations that take place on or near one of the joint venturer's plants. Often the joint venture itself generates very little hazardous waste and would be a VSQG. That VSQG should be able to send its hazardous waste to one of the venture partners that is an LQG provided that venture partner has significant control over of the joint venture. In this case, we suggest that significant control be any ownership amount at or above 35%.

6. Allowing VSQGs to Send Hazardous Waste to Unrelated LQGs With Agency Approval

Industrial Generators also support strongly EPA's suggested variation at 80 FR 57933/col. 1 that would allow a VSQG to send its hazardous waste to a LQG that is unrelated by ownership, provided the VSQG gives EPA or the authorized state 60 days advance notice and obtains approval or no rejection within the 60 days. This option would be especially helpful in the common situation where contractors provide services to LQGs that occur off-site of the LQG's operations (e.g., contractors that conduct off-site remediation, renovate commercial buildings that involve removal of lead-based paint or mercury switches, or service cell towers, compressor stations, oil field drilling rigs, etc.) Contractors typically do not want to assume the responsibility of having to manage and arrange for disposal of the hazardous waste that is generated while providing their services beyond proper management of the hazardous waste while it is under their immediate control. They would much prefer to transport the hazardous waste to the LQG for whom they are providing services and have the LQG manage the waste from thereon, including arranging for disposal. The suggested flexibility would allow the contractors to generate small volumes of hazardous waste, manage it properly while it is in their possession, and then transport it to the LQG for further management and disposal.

This variation would also facilitate proper management of VSQG quantities of hazardous waste that are generated by a toll manufacturer under a tolling contract with an LQG. The toll manufacturer would properly manage the hazardous waste while it is

on its tolling site, but then transport it to the LQG for further accumulation, consolidation, and arranging for disposal.

The 60-day limit on the implementing agency to affirmatively approve or reject the request or else it is deemed approved is necessary and a very important component of this alternative. It will ensure that the management of the hazardous waste from cradle to grave is not delayed beyond 60 days awaiting agency approval. In addition, if the VSQG contractor and LQG can expect that authorization to send the hazardous waste to the LQG will occur within 60 days, they will more readily enter into contracts that result in better management and disposal of the hazardous waste by the LQG.

Industrial Generators would also not object to this option being conditioned on there being a direct or indirect contractual relationship between the VSQG and LQG. By direct contractual relationship, we mean where the VSQG and LQG are actual signatory parties to a contract which addresses in some respect how hazardous waste that is generated will be managed. By indirect contractual relationship, we mean a situation where the VSQG and LQG are not both signatories to a contract between them, but the VSQG is subject to a contractual commitment to send the hazardous waste to the LQG, or the LQG has a contractual commitment to receive the hazardous waste from the VSQG, or both. For example, suppose Company A has contracted a VSQG hazardous waste remediation contractor (Company B) to remediate property of an LQG (Company C), and the contract specifies that the LQG Company C will receive the hazardous waste from the VSQG Company B. In this case, there is no direct contractual agreement between the VSQG Company B and the LQG Company C, yet there is a contractual arrangement that addresses how the hazardous waste will be managed.

7. Biennial Reports for Owners and Operators of Facilities That Receive Hazardous Waste and Recycle It Without Storing It (40 CFR §261.6(c)(2))

EPA proposes to modify 40 CFR §261.6(c)(2) to require owners or operators of facilities that recycle hazardous waste without storing it prior to recycling to comply with

the biennial reporting requirements of 40 CFR §265.75. EPA's justification for this modification is that EPA needs to account for the hazardous waste that such entities receive from a hazardous waste transporter and under a hazardous waste manifest. See 80 FR 57933/col. 2.

The use of a hazardous waste transporter and manifest would involve a scenario where a generator sends recyclable hazardous waste to an off-site facility for recycling and that facility can recycle it without storage. In this scenario, it is not necessary that the recycling facility submit a biennial report to ensure that the recyclable hazardous waste is accounted for. Based on the Biennial Report Instructions, the generator already is required to report on all such hazardous waste it sends off-site to a recycler that does not store it prior to recycling. Form GM of the Biennial Report Instructions indicate that although *"waste recycled, without prior storage, only in an on-site process subject to regulation under 40 CFR §261.6(c)(2)"* is not required to be reported on the biennial report, there is no exception from reporting the amount of such recyclable hazardous waste when it is sent off-site. Because the generator will report the amount of recyclable hazardous waste it sends off-site to a recycling facility that does not store it, EPA should have the information it claims it needs. Thus, we do not see a need for requiring the recycling facility to report on the hazardous waste it receives in a biennial report, and requiring such reporting could lead to redundant accounting.

8. Effect of Non-Compliance With a Condition for Exemption (40 CFR §262.10(g)(2))

Industrial Generators strongly object to the proposed language in 40 CFR §262.10(g)(2) that would cause a generator that fails to comply with any one of the many "Conditions for Exemption" for its generator status to default to being *"an illegal TSDF"* that *"becomes subject to full regulation,"* and *"would be considered an operating TSDF without a permit and/or in violation of the storage facility operating standards in parts 264 or 265."* 80 FR at 57934/cols. 1 and 3 and 57935/col. 2. Under the proposed rule at 40 CFR §262.10(g)(2), such *"failure to obtain or maintain the exemption results in a violation of one or more applicable independent requirements in 40 CFR part 124,*

262-268 or 270, or of the notification requirement of section 3010 of RCRA. A generator's violation of an independent requirement is subject to penalty and injunctive relief under section 3008 of RCRA." EPA says that this means that a VSQG, SQG or LQG that violates any Condition for Exemption will be subject to all of the requirements that apply to a higher level generator or even to a TSDF that should have a RCRA permit, and that the generator can be penalized for violations of each one of those requirements with which it does not comply. See 80 FR at 57934-35.

The approach EPA has proposed in this rule is illegal because it is based on a premise that is contrary to the statute and congressional intent. EPA's premise is that a generator that stores hazardous waste would be subject to RCRA permitting if it fails to comply with any of the generator Conditions for Exemption for its purported generator category. The statute, however, makes clear that permitting was never intended to apply to generators. In the "Standards applicable to generators of hazardous waste" at 42 U.S.C. §6922, Congress instructed EPA to establish standards for generators regarding six areas of regulation, none of which involve permitting. In contrast, in the "Standards applicable to owners and operators of treatment, storage and disposal facilities" at 42 U.S.C. §6924, Congress directed EPA to establish standards respecting seven areas, the last of which is the requirement to obtain a permit for treatment, storage and disposal. 42 U.S.C. §6924(a)(7). Viewing these two statutory provisions together, it is clear that Congress expected permits for TSD facilities but not for generators. Yet this proposed rule is based on the proposition that "if [a generator] wants the benefits of an exemption from RCRA permitting…," the generator must comply with all of the identified Conditions for Exemption. 80 FR at 57933-34. That premise is not consistent with the RCRA statute.

Thus, the final rule should contain no Conditions for Exemption that, if not met, would subject the generator to having to obtain a RCRA permit. Rather, all requirements should be what EPA calls "independent requirements," and if one is not met, such would result in a violation of that standard alone; it would not trigger violations of all permit requirements.

Even if EPA decides to disregard this statutory language and intent, the proposed rule is ill-conceived and extremely harsh and should not be finalized, as the following reasons demonstrate.

One of the VSQG Conditions for Exemption at 40 CFR §262.14 is that the words "Very Small Quantity Generator Hazardous Waste" must be placed on every container of hazardous waste sent to an LQG under common control. See 40 CFR §262.14(a)(viii)(B)(1). What if the VSQG fails to mark its container exactly as stated and instead marks it "Hazardous Waste," or "Conditionally Exempt Small Quantity Generator," or does not mark it at all? Does that really mean that that VSQG must be in compliance with all of the RCRA regulations that apply to a permitted TSDF, and could be subjected to penalties for failing to comply with each of them? This would be dozens of RCRA violations, which at $37,500/day/violator, or even at the "minor-minor" lowest penalty cell level in the RCRA Penalty Policy, could easily result in six and seven figure penalty assessments for failing to meet a single Condition for Exemption. EPA cannot justify such extreme penalties that would be so greatly out of proportion to the magnitude of the violation.

Further, would the Agency then require this non-complier, and many other non-complying VSQGs, SQGs and LQGs, to submit a Part B RCRA permit application and become permitted, and also conduct facility-wide SWMU corrective action as part of the permit process under RCRA §3004(u)? Does EPA and the authorized state agencies have the resources to administer potentially several hundred more permits and corrective actions?

Even if EPA were only to conclude that the VSQG should be subject to the applicable requirements at the next most regulated level, i.e., as an SQG, the VSQG would have to meet the following 24 SQG requirements that do not apply to a VSQG:

1. Containers must be in good condition, or if leakage occurs, transfer contents to container in good condition. (§262.16(b)(2)(i)).
2. Waste must be compatible with container (§262.16(b)(2)(ii)).

3. Containers must be closed, except when adding…waste. (§262.16(b)(2)(iii)(A)).

4. Containers cannot be handled in a manner that could cause a release (§262.16(b)(2)(iii)(B)).

5. Inspect accumulation areas weekly (§262.16(b)(2)(iv)).

6. Special conditions for incompatible waste (§262.16(b)(2)(v)).

7. Mark each container with the words “Hazardous Waste” (§262.16(b)(6)(i)(A)).

8. Mark each container with the accumulation start date (§262.16(b)(6)(i)(D)).

9. Comply with all applicable land disposal restrictions (LDR), including determining if waste meets LDR treatment standard (§262.16(b)(7) and §268.7(a)(1)).

10. Comply with applicable LDR, including prepare and retain documents supporting determination that waste meets LDR treatment standard (§262.16(b)(7) and §268.7(a)(6) and (8)).

11. Comply with applicable LDR, including notify TSDF that will receive LDR-regulated waste (§262.16(b)(7) and §268.7(a)(2) or (a)(3)).

12. Operate site to minimize fire, explosion and releases (§262.16(b)(8)(i)).

13. Have equipment to respond to a hazardous waste emergency (§262.16(b)(8)(ii)).

14. Test and maintain emergency response equipment (§262.16(b)(8)(iii)).

15. Enable personnel access to communication or alarm system during handling of hazardous waste (§262.16(b)(8)(iv)).

16. Maintain aisle space around hazardous waste containers (§262.16(b)(8)(v)).

17. Make emergency response arrangements with Local Emergency Planning Committee (LEPC) (§262.16(b)(8)(vi)(A)).

18. Maintain records documenting arrangements made with LEPC (§262.16(b)(8)(vi)(B)).

19. Have full time emergency coordinator (§262.16(b)(9)(i)).

20. Post emergency information next to telephones or in areas where hazardous waste is generated and stored (§262.16(b)(9)(ii)).

21. Ensure employees are familiar with emergency response procedures (§262.16(b)(9)(iii)).

22. Respond to emergencies (§262.16(b)(9)(iv)).

23. Obtain EPA identification number (§262.18(a)).

24. Use a manifest when shipping hazardous waste (§262.20(a)).

Does EPA really mean that a violation of one VSQG Condition for Exemption, like an improperly marked drum, should result in finding violations of these 24 SQG requirements?

Similarly, an SQG Condition for Exemption is the requirement to keep containers holding hazardous waste closed at all times except when adding or removing hazardous waste. See 40 CFR §262.16(b)(2)(iii). What if one container of hazardous waste is found not to be completely closed during an inspection? Does that mean that the SQG is now subject to penalties for not meeting LQG requirements, or worse, for not having a RCRA permit and for not meeting the many TSDF requirements? Penalties that could be applied to these dozens of violations would not be remotely equivalent to the single penalty that appropriately could be assessed for not having a container properly closed.

With this proposed change, EPA appears to be addressing a situation whereby a generator routinely exceeds its monthly generation limit and operates at the next higher level of generator status without complying with the more stringent requirements of that higher level. In that situation, EPA believes the generator should be subject to violations for noncompliance with all requirements applicable to that higher level of generator status. But EPA's proposal goes well beyond this objective. It would also result in a VSQG that did not properly mark a container but truly is generating less than 100 kg/month of non-acute hazardous waste each month to be subject to the same penalties as a purported VSQG that routinely generates more than 100 kg/month.

EPA's proposal is draconian by any measure. It is not a clarification of the agency rules, but rather an attempt to dictate an enforcement policy through a rulemaking. Even more troubling, it mandates an enforcement result that even the most aggressive enforcement official likely would not take in most circumstances.

As noted earlier, the fundamental problem with EPA's proposal is that it is premised on a generator having to have a TSDF permit and meeting TSDF requirements if it violates any Condition for Exemption, even though Congress never intended to require a RCRA permit for a generator. See 42 U.S.C. §6922. To rectify this in the final rule, all Conditions for Exemption should be changed to "independent requirements," and EPA should clarify that a violation of an independent requirement neither results in the generator violating RCRA for not having a TSDF permit and meeting TSDF standards, nor for not meeting the standards of the next higher-level generator status.

If EPA decides to disregard this statutory backdrop, there are still three key problems with the approach EPA proposes, and three key adjustments EPA should make to the proposed rule. First, under EPA's proposal, whenever there is a violation of any one Condition for Exemption, multiple violations would occur and multiple penalties could be assessed. The main problem with this is that the Conditions for Exemption are much too broadly defined. The Conditions for Exemption are now proposed to be all of the requirements that appear in proposed §262.14 for VSQGs, §262.16 for SQGs, and §262.17 for LQGs. There are about 10 Conditions for Exemption for VSQGs, and over two dozen Conditions for Exemption each for SQGs and LQGs.

One way to address this problem is to limit the Conditions for Exemption to just those criteria that distinguish one status of generator from another. Specifically, the Conditions for Exemption for a VSQG should be limited to generation each month of hazardous waste below the VSQG thresholds, e.g., 100 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, and 100 kg of residue of acute hazardous waste. Similarly, the Conditions for Exemption for an SQG should be limited to generation each

month of hazardous waste below its threshold of 1000 kg a non-acute hazardous waste, etc. and removal of that waste within 180 days. The Conditions for Exemption for an LQG should be limited to removal of its hazardous waste within 90 days. All other requirements stated in 40 CFR §262.14, §262.16 and §262.17 should not be identified as Conditions for Exemption but rather as "independent requirements." These other requirements, such as how drums are marked, kept closed, or stored, are operational standards that prescribe how the generator should manage its hazardous waste. They are not conditions that differentiate one generator status from another.

Under our suggested approach, for example, if an SQG fails to close its drum of hazardous waste, but continues to generate between 100 and 1,000 kg of non-acute hazardous waste per month, it would still be considered an SQG, but one that has violated one of its operation standards. Thus, it would be out of compliance for this one SQG operation standard, but not for all of the operation standards that apply to an LQG or a TSDF. This result is reasonable because, in this example, the SQG has continued to generate less than 1000 kg of non-acute hazardous waste each month, and in that case, there is no basis for it being subjected to LQG or TSDF requirements.

In summary, each operational standard in §262.14 for VSQGs, §262.16 for SQGs, and §262.17 for LQGs should not be identified as a Condition for Exemption. Assuming EPA disregards the statutory intent not to require permits for generators, the only Conditions for Exemption should be those criteria that delineate the waste generation amount differences or removal requirements between a VSQG, SQG, LQG and TSDF.

Second, a violation of a Condition for Exemption (narrowly defined as suggested above) should not result in charges that the generator has failed to obtain a TSD permit and to meet the many TSDF permit requirements. If a VSQG exceeds 100 kg per month of non-acute hazardous waste but still generates less than 1000 kg per month of non-acute hazardous waste, it has not violated the requirements that apply to a permitted TSDF or to an LQG. It is operating at an SQG level, and should only potentially be responsible for meeting the SQG standards. Similarly, if an SQG

generates more than 1000 kg per month but the hazardous waste is removed within 90 days, the SQG has not violated TSDF standards, but rather is still meeting the LQG Conditions for Exemption, and at most, should be subject only to penalties for failing to meet any other applicable LQG standard.

Third, in this rulemaking, EPA should neither dictate that a violation of a Condition for Exemption (narrowly defined as suggested above) will result in violations of requirements at the TSDF or next level of generator status nor mandate penalty assessments for all such violations. How to charge a generator for violating RCRA and what penalty approach to take should be a matter left to the discretion of EPA and state enforcement officials. Thus, at most the final rule should state that violation of a Condition for Exemption (narrowly defined as suggested above) may be the basis for charging the generator with violating the next level of generator requirements, but EPA should make clear that this rule does not compel an enforcement official to charge all such violations or impose penalties for all such violations. EPA's programmatic rules, particularly those stemming from a rulemaking like this that purports to be a clarification and consolidation of existing generator rules, should not establish agency enforcement policy.

These suggested changes are especially important in light of EPA's stated intent to move forward with NextGen enforcement, which is based largely on transparency and data availability. A notice of violation letter that includes all of the violations cited above because, for example, a generator failed to properly label one container would mislead the public into thinking that a particular site presents a serious threat to public health, safety or the environment. This conclusion would be misinformed and inaccurate.

To summarize, Industrial Generators strongly urge EPA to revise proposed §262.10(g)(2) and §262.14, §262.16 and §262.17 to:

1. Consistent with the statute, re-characterize all Conditions for Exemption as operational standards/independent requirements such that

the violation of one would not trigger the violation of the RCRA permitting rules.

2. If EPA decides to disregard the relevant statutory backdrop, it should still:

a. Limit the Conditions for Exemption to those criteria that distinguish one generator status from another, e.g., exceeding the stated levels of acute and non-acute hazardous waste for VSQGs and SQGs, and not removing hazardous waste within 180 days for an SQG and 90 days for an LQG. EPA should also move all of the operating standards out of the §262.14, §262.16 and §262.17 and not identify them as Conditions for Exemption.

b. If a violation of one of these more limited Conditions for Exemption occurs, and an enforcement official decides to charge violations, it should not charge violations of the permitted TSDF rules, but rather only violations of the next higher level of generator status that reflects the actual amount of hazardous waste that was generated.

c. Program-initiated rules, like these generator rules, should not require enforcement officials to consider a violation of a Condition for Exemption to be a violation of the next level of requirements for a generator or trigger penalties for such multiple violations.

9. <u>"Accurate" Hazardous Waste Determinations (40 CFR §262.11)</u>

At the beginning of new sections 40 CFR §262.11, EPA proposes to explicitly require that a generator must make an "accurate" hazardous waste determination. For over 35 years EPA has implemented its generator rules without having to explicitly state

that a generator must make an accurate determination. It is clear from hundreds of enforcement actions that if a generator fails to make an accurate determination, it has violated the RCRA rules and EPA can and will impose penalties for the violations.

The concern Industrial Generators have with adding this concept of "accurate" to the rules is that it may be construed by an enforcement official to require a generator to fully and completely classify its wastestreams. For example, it is not unusual for a generator to "overclassify" what might be a nonhazardous waste as a hazardous waste when the generator is uncertain of the classification, or the management costs would not significantly increase by classifying the waste as hazardous. EPA has always allowed overclassification, yet requiring the waste determination to be "accurate" could be interpreted by an inspector as no longer allowing overclassification.

There are also situations where a generator knows that a hazardous waste exhibits one "D" code, but thinks it might exhibit another D code or have some listed codes, so it enters all of the possible codes. Would that be an accurate waste determination?

We are unaware of a single enforcement act case where the generator successfully defended itself by saying that it did not violate the rules requiring it to properly classify its waste because it conducted a waste determination, even though the result of that determination was inaccurate. Thus, there is no need to add the word "accurate" to proposed 40 CFR §262.11, and doing so will create confusion as to what the rule requires.

10. Hazardous Waste Determination at Point of Generation (40 CFR §262.11(a))

EPA proposes to add a new rule at 40 CFR §262.11(a) whereby a *"hazardous waste determination for each solid waste 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" (emphasis added). Industrial Generators do not question the fundamental RCRA requirement that a hazardous waste determination be made by the generator of a solid waste, and later, if the waste changes. However, the language EPA has proposed – - *"before any dilution, mixing or other alteration of the waste occurs,"* will create confusion and should be deleted, and the reference to *"at the point of waste generation"* should be avoided.

Over the years, EPA has issued specific interpretations of when a solid waste first should be evaluated to determine if it is a hazardous waste, and those interpretations may require evaluation after *"dilution, mixing or other alteration of the waste occurs."* As just a few examples show:

- Many listings that apply to residues, like sludges, wastewater, filters, ash, etc., from treating waste, have their point of waste determination after the waste is treated. For example, K001 is *"bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol."* The proposed language (*"before any…alteration of the waste occurs"*) suggests that these listings should be subject to an earlier point of generation and waste determination before the wastewater treatment occurs.

- Under 40 CFR §261.4(c), hazardous waste generated within a manufacturing process unit is not subject to regulation, including a hazardous waste determination, until it is removed from the unit or remains in the unit for more than 90 days after operations cease. The proposed language suggests that the hazardous waste determination will need to be made before removal, especially if the removal, such as with water, were to alter the composition of the waste.

- When an intact building that is intended for discard is demolished, the point of generation and hazardous waste determination is after the

demolition occurs and the construction debris is ready for removal. See letter M. Shapiro to K. Kastner (June 3,1994). The proposed language suggests that the point of generation and waste determination would be before the demolition.

- Even though cleaning out a power plant boiler will generate several distinct liquid washout streams, and the first or second stream by themselves might exhibit a hazardous waste characteristic, the waste determination can be made on the combined streams. See 62 FR at 26006-26007 (May 12, 1997). The proposed language suggests that the waste determination would have to be made on each separate washout stream before any dilution.

- Movement of contaminated media within an area of contamination (AOC) or within a designated corrective action management unit (CAMU) is not a new point of generation and does not require a waste determination even if the movement alters the composition of the media (See Management of Remediation Waste Under RCRA," pp. 3-4, EPA 530-F-98-026 (October 1998) (a/k/a Memo from T. Fields and S. Herman (Oct. 14, 1998). The proposed language suggests that such movement within an AOC or CAMU would trigger a waste determination.

The problem with the proposed language is that it goes too far by categorically saying that the point of generation and point of waste determination are always before any dilution, mixing or other alteration of the waste. Further, by stating that the hazardous waste determination must be made at the *"point of generation,"* EPA is both "begging the question" as to where the point of generation is and potentially opening up that concept to new interpretations that disregard EPA's prior nuanced interpretations. The point of generation and point of waste determination are difficult concepts. EPA should not try to codify these concepts in an overly-generalized rule that loses or confuses the nuance EPA has provided in its many interpretations. Thus, we suggest that either EPA delete altogether this proposed rule at 40 CFR §262.11(a), or limit it to

say, *"a hazardous waste determination for each solid waste must be made by the generator, and at any time in the course of its management when the waste 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."* This language will alert generators to their obligation to make waste determinations, yet not interfere with the many point of generation and point of waste determination interpretations that EPA has issued over the years.

Further, EPA should clarify in the final rule that this requirement to make a hazardous waste determination only applies to materials that are generated as solid wastes. Materials that are excluded from the definition of solid waste, such as discharges to a POTW, or hazardous secondary materials that are reclaimed in a closed-loop, are not solid wastes under 40 CFR §261.4(a)(1)(ii) and §261.4(a)(8) respectively, and therefore, would not be subject to a hazardous waste determination.

11. Point of Waste Determination for Wastewaters Conveyed to a Wastewater Treatment System

Industrial Generators urge EPA to clarify that wastewaters that are directed via pipe or other enclosed means of conveyance from industrial operations into a wastewater treatment unit ("WWTU") as defined in 40 CFR §260.10 do not have to be classified as to whether they are hazardous and if so for what waste codes. Such classification serves no regulatory or environmental purpose.

A tank-based wastewater treatment system and its ancillary equipment that meet the definition of a WWTU are not regulated under RCRA. What the hazardous waste codes might be for such wastewater that is conveyed to the wastewater treatment system is of no consequence. Further, when the wastewater is discharged under an NPDES permit or to a POTW, the discharge is excluded from the definition of solid waste under 40 CFR §261.4(a)(1) and (2), and therefore, knowing the hazardous waste codes that attached to such wastewater before discharge is of no consequence.

We recognize that materials that are removed from a wastewater treatment system, such as sludges and filters, would have to be classified as to whether they are hazardous waste, and if so, which codes they carry. But that waste classification should occur at their points of generation when they are removed from the WWTU. The wastewater itself, which is treated and discharged, would qualify for the discharge exclusions from the definition of solid waste, and while in the WWTU, the WWTU is exempt from RCRA, so there really is no need for each wastewater stream to be classified and coded.

At a typical manufacturing plant that generates diverse wastewater streams, dozens if not hundreds of wastewater streams can be collected, directed to the headworks of the WWTU, and then treated in the WWTU. To have to identify whether each of these wastewater streams that are conveyed via pipe to a WWTU are hazardous at their points of generation when they are not subject to regulation under RCRA makes little sense. One objective of this rulemaking is to remove unnecessary regulations. In that spirit, the requirement to classify wastewater streams that are conveyed via pipe to a WWTU should be removed.

Some states have already recognized the wastefulness of requiring generators to classify their wastewater streams at the points of generation. For example, Tennessee Rule 0400-12-01-.03(2)(a)2 [page 3 of the Rule] states:

> *"(2) Notification*
> *(a) Applicability*
> *2. A person shall not be required to notify with regard to each individual hazardous wastestream generated which is piped along with other wastes to an on-site wastewater treatment facility or piped to a publicly owned treatment works (POTW) for treatment. However, if the conglomerate wastestream delivered by the collection system to the on-site wastewater treatment facility or to the POTW is a hazardous waste as defined in Rule 0400-12-01-.02, then the generator must notify with regard to that wastestream*

and file an annual report in accordance with subparagraph (5)(b) of this rule."

Tennessee Rule 0400-12-01-.03(5)(a)3 [page 22 of the Rule] also states:

"(5) Recordkeeping and Reporting
(a) Recordkeeping [40 CFR 262.40]
3. A generator must keep records as necessary to demonstrate compliance with subparagraph (1)(b) of this rule - to include any test results, waste analyses, or other determinations made in accordance with that subparagraph - for at least 3 years from the date that the waste was last sent to on-site or off-site hazardous or nonhazardous waste treatment, storage, or disposal facilities. Such record must document the basis for the hazardous waste determination, including those determinations based on the generators knowledge of materials and processes utilized rather than on laboratory analyses. Pursuant to Rule 0400-12-01-.03(2)(a)2, this requirement does not apply to individual wastewater streams in cases where the hazardous waste determination is made on the conglomerate wastestream."

Note that although these rules relieve the generator of waste determination and documentation at the point of generation for the many wastewater streams that typically are directed to a WWTU, the rules still require waste determination at the headworks. Although we would prefer not to have to do the waste determination and documentation at either the many upstream individual points of generation or at the downstream headworks, to the extent EPA believes some waste classification is necessary, it should require it only at the headworks to the WWTU where the combined streams would be classified according to whether they exhibit a characteristic and whether they carry any listed codes. In that case, this principle of not having to classify wastestreams at point of generation so long as they are classified at the headworks should also be extended to wastestreams that are directed to an elementary neutralization unit ("ENU") as defined

in 40 CFR §260.10. By classifying such wastestreams at the headworks, the ENU requirement that it receive only D002 corrosive wastewater can be assured, and unnecessary classification at potentially multiple upstream points of generation can be avoided.

12. Determination of Hazardous Waste Listings (40 CFR §262.11(c))

Industrial Generators have no objection to EPA identifying in 40 CFR §262.11(c) the factors a generator should consider in evaluating whether its waste is listed. We question, however, whether this rule should indicate that a delisting option is available. Although such an option should be available, since EPA delegated delistings to authorized states, in our experience delistings have been infeasible in most authorized states. Few states have the staff capable and available to oversee and rule on a delisting petition, and many states charge exorbitant fees for submission of a delisting petition, making delisting rarely economical. EPA should withdrawal the delisting program from the states and run the program itself, and in any event, not represent that delisting is a realistic option at this time.

13. Determination of Hazardous Waste Characteristics (40 CFR §262.11(d))

In proposed 40 CFR §262.11(d) EPA should delete the word "either" and replace the word "or" with "and/or" so as to read: "*by following the procedures in paragraph (d)(1) and/or (2) of this section.*" This will clarify that a generator may use either testing or process knowledge, or a combination of both, to classify a wastestream. For example, it is common to rely on some analytical data, perhaps of similar wastes, and one's knowledge of the potential composition of the target wastestream to conclude that the target wastestream is or is not a hazardous waste due to a characteristic. It is also very common to rely first on process knowledge to determine what are the appropriate analytes (e.g., RCRA metals, VOCs, SVOCs, etc.), and then to conduct testing only on those analytes.

Industrial Generators also suggest that the word "applicable" be inserted before "methods" in proposed 40 CFR §262.11(d)(1) so as to read: *"The 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 by the administrator under 40 CFR 260.21 and in accordance with the following: . . ."* By adding the word "applicable," this rule will make clear, for example, that if a waste is being evaluated for the toxicity characteristic, a Method 1311 test should be used, as opposed to one of the test methods that must be used to evaluate whether a waste is ignitable due to its flash point.

14. Overly-Prescriptive Waste Determination Documentation (40 CFR § 262.11(e))

The proposed waste determination documentation rule at 40 CFR § 262.11 is overly-prescriptive and too broad in scope. In this Comment #14 and its subheadings, we address the overly prescriptive concerns. In Comment #15 and its subheadings, we address the overly broad concerns.

14.A. The rule ignores how generators make hazardous waste determinations (40 CFR § 262.11(e))

The proposed regulation includes numerous prescriptive activities that SQGs and LQGs must perform to generate waste determination documentation for each hazardous waste the site generates. The proposed recordkeeping requirements, in essence, will push SQGs and LQGs to having a site-specific Waste Analysis Plan (WAP) that follows EPA's expansive WAP guidance. This is because SQGs and LQGs will face so much compliance uncertainty meeting the numerous §262.11(e) requirements, and the best way to defend against an enforcement action regarding waste determination documentation would be to have a detailed WAP.

For instance, consider the proposed mandatory requirement that SQGs and LQGs must document the "validity" of all sampling and analytical methods used. EPA elaborates that "validity" means "quality assurance/quality control" when used in this context. See 80 FR 57942/col. 1. The only way a generator

could confidently comply with this quality assurance/quality control requirement for its sampling and analysis would be to have a WAP that includes a quality assurance/quality control section that addresses the use of duplicate samples, equipment blanks, field blanks, and trip blanks, and the associated quality assessments, such as audits and quality assurances, corrective actions and reports to management.

The rule's preamble in support of the proposed §262.11(e) recordkeeping requirements includes no mention of the important role commercial TSDFs play in assisting SQGs and LQGs in making hazardous waste determinations. The preamble does not discuss the "waste profile" forms that are currently universally used by commercial TSDFs to summarize sampling results and document each hazardous waste determination. The established use of waste profiles makes unnecessary the proposed extensive recordkeeping requirements.

Industrial Generators acknowledge the importance of making accurate hazardous waste determinations, and that existing regulations already require generators to maintain certain waste determination records, such as laboratory test results. The proposed new recordkeeping regulation, however, is too prescriptive and burdensome, and therefore, should not be adopted. Instead, EPA should solicit input from various stakeholders, such as commercial TSDFs, on appropriate waste determination recordkeeping requirements and then propose a rulemaking at a later time based on that dialogue.

Nonetheless, if EPA insists on adopting a waste determination documentation rule, the following changes, at a minimum, should be made to the information requirements in the proposed rule.

14.B. Waste determination documentation "must" include (40 CFR §262.11(e))

Industrial Generators are very concerned by the proposed language in 40 CFR §262.11(e) regarding the waste determination records:

> *"Records must include, but are not limited to, the following types of information; the results of any tests, sampling, or waste analyses; records documenting the tests, sampling and analytical methods used in 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 explained the knowledge basis for the generators determination…"*

(Emphasis added.) As written, it would appear that a generator must include all of these types of information for every waste determination it makes. Because this requirement also requires records supporting a generator's process knowledge, and proposed 40 CFR §262.11(d)(2) identifies many different types of information that a generator may use as a basis for its process knowledge, together the list of information that would have to be documented under this proposed rule is quite extensive.

Generators are properly selective in the information they rely upon to make a waste determination on a particular wastestream. Sometimes a generator will need extensive information regarding the composition, test results, process information, etc., but other times a waste determination can be made on very little information simply because the waste is obviously hazardous or non-hazardous. To require the records to include all of the specified information, or even some of this specified information, would cause generators, in many cases, to go through the exercise of preparing the required yet unnecessary information.

If EPA adopts a final rule requiring waste determination documentation, EPA should change the language of this rule from *"must"* to *"may."* Alternatively, EPA should change this rule to read in pertinent part:

> *"…These records must comprise a generator's knowledge of the waste and support the generator's determination, as described at 40 CFR 262.11(c) and (d). If the generator relies on any of the following information for its determination, it must include in its records such information: the results of any tests, sampling, or waste analyses; records documenting the tests,…"*

Both of these alternative formulations of this rule would make clear that information that was not relevant to the generator's determination need not be documented.

14.C. Documentation of validity and relevance of analytical test methods (40 CFR §262.11(e))

EPA should delete the proposed language in 40 CFR 262.11(e) requiring that the documentation "*demonstrate the validity and relevance of such tests.*" For tests methods that are required under the regulations, there should be no need to document the validity or relevance of the test since that was done by EPA when it adopted those required tests. For other tests that the generator relies upon, such as a DOT explosive hazardous materials test to determine if a waste is D003 reactive, most generators will not have the technical expertise in analytical chemistry to "*demonstrate the validity and relevance*" of the test. Rather, the generator would have consulted a commercial laboratory and obtained a recommendation on what test to employ. Asking a generator to document the technical reasons for the recommendation asks for more information than a typical generator can reasonably provide, and is unnecessary and burdensome.

14.D. Waste determination documentation warning against comingling (40 CFR §262.11(e))

We question whether the proposed sentence, "*Generators may wish to segregate any of their municipal solid waste from other solid and hazardous waste to avoid potential comingling,*" is the best way of stating this point. We understand this point to be a warning to generators not to create additional hazardous waste by mixing their municipal solid waste with other listed hazardous waste or characteristic hazardous waste that could cause the entire mixture to be hazardous waste under the mixture rule. Perhaps the following makes the point more clearly: "*Generators may wish to segregate their municipal solid waste from hazardous waste as necessary in order to avoid each mixture becoming a hazardous waste under the mixture rule at 40 CFR §261.3(a)(2)(iv).*"

15. Overly-Broad Scope of the Waste Determination Documentation (40 CFR §262.11(e))

As noted above, Industrial Generators recommend that EPA, in a separate rulemaking, consider further the appropriate level of detail and scope of the waste determination documentation it should require of generators. If EPA, nonetheless, decides to adopt waste determination documentation rules in this rulemaking, the scope should be narrowed as explained below.

15.A. Documentation of determination that a solid waste Is not hazardous waste (40 CFR §262.11(e))

EPA proposes to require SQGs and LQGs to prepare and retain documentation of each determination that a particular solid waste is a hazardous waste as well as each determination that a particular solid waste is not a hazardous waste. This latter proposed requirement to document each determination that a particular solid waste is not a hazardous waste would be an extension of the current rules and a significant new burden.

Industrial Generators do not support a new requirement to document determinations that a solid waste is not a hazardous waste. This would be extremely burdensome for facilities that generate multiple solid wastes that in most cases are not hazardous wastes. For example, at a research and development (R&D) facility where prototype products are constantly being reformulated for development into marketable products, many slightly different solid wastes are generated within a typical week or month. The personnel involved in the formulation of these prototypes will have a good understanding of whether the wastes associated with each formulation would potentially be hazardous waste based on the ingredient mix that they are using in each formulation. Most of the formulations for a specific product will use ingredients that are within the same family of chemicals, maybe with slightly different percentages or with only one or two different ingredients. If the waste from formulation #1 of a prototype product is not a hazardous waste, it is likely that the waste from formulation #100 of that prototype product is also not a hazardous waste. Yet based on the rule as proposed, documentation would have to be created for the wastes from each one of those different formulations.

Similar burdens would result in a laboratory where numerous experiments occur on a daily and weekly basis with slight variations in the materials used. Again, the laboratory personnel will have a good idea as to which wastestreams might contain ingredients that could cause the waste to be hazardous, but there will be many, many wastes that they generate that they know will not be hazardous simply because of what the waste contains. Yet for each one of these laboratory wastes, documentation would have to be created and retained.

This is not just an issue for universities and hospitals, but is also an issue affecting many Industrial Generator members since we also have extensive R&D and laboratory facilities. Manufacturing operations themselves will also be very affected and burdened. Even if manufacturing operations regularly produce the

same family of products, every minor process or raw material change could require new waste characterization documentation.

This is also a significant additional burden for manufacturing facilities with regard to common solid wastes they generate that they know are not hazardous wastes, but an inspector may not know that and he/she may expect and demand waste determination documentation. Examples include inert plastics, non-contaminated wood, clean soil, non-painted metal, food waste, road repair waste, shrubbery and vegetative waste, raw water supply filter waste, packaging, office waste, and product trimmings. EPA suggests that documentation would not be required for common solid wastes, but unless EPA provides a complete list of such common solid wastes, plant owners and operators would risk non-compliance if they assume that an inspector will agree with them that a particular wastestream is a common solid waste not requiring waste determination documentation. Of course, this whole issue of what is or is not a common solid waste requiring waste classification documentation is avoided if EPA does not require waste determination and documentation of solid wastes that are not hazardous wastes, which we urge EPA to do.

Further, documenting why certain wastestreams do not meet hazardous waste listings or characteristics raises the difficult question of how much documentation is required to support the negative conclusion that a waste is not hazardous. For example, if a facility has generated a solvent wastestream, it may be appropriate to document whether the waste is D001 ignitable or carries any of the F-listed solvent codes, but will the inspector also expect some statement in the documentation that the stream is not D002 corrosive, D003 reactive, or D004-43 characteristic. These are “decision-tree boxes” that the inspector might claim need to be checked off and documented. There simply are inherent problems in proving and documenting that a wastestream is not X, Y or Z.

In addition to this requirement being quite burdensome, the proposed requirement to document each determination that a solid waste is not a hazardous waste is not necessary. Currently, if questioned by an inspector, a generator must provide the inspector with sufficient justification as to why a particular solid waste is not a hazardous waste. EPA is quite successful in bringing enforcement actions when the generator's justification is insufficient.

In summary, EPA should only require documentation when a solid waste is determined to be a hazardous waste. Specifically, proposed 40 CFR §262.11(e) should be revised to provide:

> *"(e) Recordkeeping for small and large quantity generators. A small or large quantity generator must maintain records supporting its determination that a solid waste, as defined by 40 CFR 261.2, 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 generated. . . ."*

15.B. Documentation of determination that a recycled hazardous secondary material is excluded from the definition of solid waste (40 CFR §262.11(e))

As proposed, 40 CFR §262.11(e) requires records supporting the generator's *"solid . . .waste determinations, including records that identify a material as a solid waste, as defined by 40 CFR 261.2. . ."* This language would appear to require an SQG or LQG to maintain records of whether a particular hazardous secondary material is a solid waste, not simply whether a particular solid waste is a hazardous waste. This is clearly contrary to EPA's stated intent. See, e.g., 80 FR at 57943/col. 3. *(". . . documentation will not be required for entities that do not generate a solid waste. . .").*

A requirement to document whether each hazardous secondary material that is recycled is a solid waste would also go well beyond the current

requirements in the "definition of solid waste" rules. In the January 13, 2015 Definition of Solid Waste rule, after much deliberation and debate, EPA decided to require documentation that a material is not a solid waste only for the "generator control" and "verified recycler" exclusions and the legitimacy factor four alternate showing of "no significant risk" at 40 CFR §261.4(a)(23)(ii)(C) and (E), §261.4(a)(24)(vii), and §260.43(a)(4)(iii), respectively. Thus, EPA should not include in the final rule the proposed language that a *"generator must maintain records supporting its solid . . . waste determinations, including records that identify a material as a solid waste."* As suggested in the prior comment above, 40 CFR §261.11(e) should be revised to provide:

> "(e) *Recordkeeping for Small and Large Quantity Generators*. *A small or large quantity generator must maintain records supporting its determination that a solid waste, as defined by 40 CFR §261.2, 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 generated. . ."*

15.C. Exceptions to waste determination documentation (40 CFR §262.11(e))

The proposed waste determination documentation language also needs to recognize important documentation exceptions that EPA has in its existing rules, and most of which, it acknowledges in this preamble. These exceptions are underlined below. Thus, if EPA adopts a waste determination documentation requirement in the final rule, it should state:

> "(e) *Recordkeeping for Small and Large Quantity Generators. A small or large quantity generator must maintain records supporting its determination that a solid waste, as defined by 40 CFR §261.2, is a hazardous waste, as defined by 40 CFR §261.3, except that the documentation is not required for:*

1. a hazardous secondary material that is excluded from regulation as a solid waste;

2. a solid waste that does not have the potential to be a hazardous waste, such as food waste, restroom waste, paper products, and similar materials;

3. a solid waste that is excluded or exempted from regulation as a hazardous waste; and

4. a hazardous waste that is otherwise exempt from the requirement to make a hazardous waste determination and/or to document such determination.

Records must be maintained for at least three years from the date that the waste was last generated. . .”

Exception #1 affirms that generators are not required to document their determination that a hazardous secondary material is excluded from regulation as a solid waste.

Exception #2 codifies EPA’s intent at 80 FR 57944/col. 1 that commonly-generated solid wastes are not subject to the documentation requirement.

Exception #3 is especially important because there are many solid wastes in 40 CFR §261.4(b) that are not regulated as hazardous wastes, and are exempt from the hazardous waste determination requirement. EPA states in the preamble at 80 FR 57943/col. 3 that *“documentation will not be required for entities that . . . generate a solid waste that has been excluded or exempted from Subtitle C controls.”* Exception #3 would codify this intent.

Similarly, for Exception #4, there are many hazardous wastes, e.g., universal hazardous wastes, scrap metal (not excluded under §261.4(a)(13)), household hazardous waste, spent lead acid batteries, etc. that are exempt by rule and/or interpretation from the waste determination and/or documentation requirement. See, e.g., 40 CFR §261.6(a)(3), 40 CFR Part 266, Subparts C, G, N, 40 CFR §261.9(a) and 40 CFR Part 273; see also 60 FR 25504 (May 11, 1995). EPA should add these explicit exceptions to any rule it adopts regarding waste determination documentation.

16. Monthly Determination of Generator Status (40 CFR §262.13)

The proposed language in 40 CFR §262.13(b) states that:

> *"a generator who generates both acute hazardous waste and non-acute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following:*
>
> *(1) Counting . . .*
>
> *(2) Subtracting . . .*
>
> *(3) Determining . . .*
>
> *(4) Comparing . . .*

This mandates that each month the generator has a regulatory obligation to calculate precisely the amount of hazardous waste it generates.

Most generators will generate fairly constant levels of hazardous waste and will not need to perform calculations very often to ensure that they are in the correct generator category. Usually calculation is only needed when a generator expects that its generation in a particular month will be close to the limit for its generator category. In such a month, it would be prudent for the generator to go through the calculation steps identified in §262.13(b), but that step-by-step calculation is not necessary every month. Further, an LQG would rarely need to conduct this calculation since there is no upper quantity limit on LQG status, and there is little reason for or benefit from an LQG finding

that it is within the SQG range of generation (i.e., 100 to 1000 kg/month of non-acute hazardous waste) for a few months since the generator is already set up to operate as an LQG meeting LQG standards. Thus, this rule should be rewritten to make clear that when a calculation is conducted, it should account for wastes as specified in this rule, but that a monthly calculation is not required.

17. Counting Hazardous Waste Generation for Generator Status (40 CFR §262.13(c) and (d))

Although we recognize that EPA proposes to simply move its generators status counting rules from current 40 CFR §261.5(c)(d) to new section 40 CFR §262.13(c) and (d), EPA should use this opportunity to clarify some of those rules that have created problems and misunderstandings in the past. First, under proposed 40 CFR §262.13(c)(2), hazardous waste is not be counted if it 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." EPA should clarify that "immediate" management does not mean that the actual neutralization or treatment activities must occur immediately, but rather that there can be "immediate" storage that precedes those processes and that storage is part of the exempt elementary neutralization unit, wastewater treatment unit or totally enclosed treatment facilities. In other words, EPA should clarify that the storage preceding the neutralization or treatment would be considered immediate management.

Second, EPA should clarify that the "spent materials" that it refers to in 40 CFR §262.13(d) are hazardous waste spent materials, which, we agree, are proper to count once even if they are subsequently reused. Spent materials that are excluded from the definition of solid waste, for example by being reclaimed in a closed loop and reused in the original process under 40 CFR §261.4(a)(8), however, are not hazardous wastes and should not be subject to or counted at all under this rule. Indeed, better than a clarification in the preamble, we suggest that EPA modify 40 CFR §262.13(d)(3) to read "hazardous waste spent materials that are generated, reclaimed . . . ." This will make

clear that only hazardous waste spent materials need be counted once, and it is consistent with how the preceding subparagraphs §262.13(d)(1) and (2) are expressed.

18. Maintaining Hazardous Waste Determination Records Until the Generator Site Closes

EPA requests comment on whether to require SQGs and LQGs to retain hazardous waste determination documents until the generator site closes. See 80 FR at 57945/col. 3. Industrial Generators oppose such a requirement, or for that matter, any retention period beyond the current three-year rule. This would be particularly burdensome at industrial plants that change their product line frequently, e.g., batch chemical plants, toll manufacturers, or manufacturing plants that, due to frequent product innovation, turn over a large portion of their product line every few years. At these "batch," "toll" and "innovative" manufacturing plants, it is not unusual for dozens of products to be produced for a few years and then no longer produced. It is also not unusual that each one of these products will have several solid wastestreams that would require, under the new proposal, waste determination documentation as to whether each stream is hazardous or nonhazardous. Moreover, it is not unusual that such plants will be in operation for many decades before they close. If waste determination documentation is required for each wastestream from every product until closure at these plants, many file drawers with reams of paper (or gigabytes of memory space) of outdated waste determination documents would have to be retained for many years after the generation of the wastes ceased. This also conflicts with the April 4, 2006 Burden of Reduction final rule (64 FR 16862) where EPA reduced recordkeeping requirements for TSDFs from the life of the facility to the current 3 or 5 year period. So for example, a TSDF only needs to maintain records of its waste analysis/determinations for 3 years in 40 CFR 264.73(b)(3). Yet here, EPA is proposing to require a generator to keep the same information for the life of the facility.

Indeed, under the applicable RCRA Statute of Limitations, EPA only has enforcement authority to challenge non-compliant waste determinations and waste determination documentation for five years after generation of the waste. Having to

retain waste determination documents until closure of a site, which could be decades after the waste generation ceased, would serve no useful purpose, and could greatly clutter a plant's files.

19. Waste Determination Documentation for Very Small Quantity Generators

EPA requests comment on a possible requirement that VSQGs prepare waste determination documents and retain them. See 80 FR at 57946/col. 1. Industrial Generators oppose such a requirement. VSQGs have historically been subject to minimal RCRA standards due to the limited quantity of waste that they generate and their lack of familiarity (relative to other generators) with the waste regulations. Most VSQGs rely on third-party intermediaries, brokers, and waste management companies to profile their wastes, and to assist the VSQG in ensuring that the hazardous wastes are properly handled and disposed. EPA has not justified the burden that a requirement to prepare and retain waste determination documents would place on VSQGs given that they generate such a minimal amount of hazardous waste. Further, the TSDFs that receive the wastes from VSQGs for treatment or disposal are already required to maintain records of these wastes, so requiring VSQGs to retain the same information would be largely redundant.

20. Hazardous Waste Determination Electronic Decision Tool

Industrial Generators would be interested in an electronic decision tool EPA discusses at 80 FR 57946 if it truly would be useful and reliable in making hazardous waste determinations. We question its feasibility, however. The fact that no commercial entity has attempted to develop such an electronic tool suggests that it may not be feasible. Hazardous waste determinations rest on many decisions, and often those decisions cannot be made on simple black-and-white rules. There are many waste determination issues that are grey: where is the point of generation; what is a representative sample; what does a listing description mean; what is a listed spent solvent; what do the characteristics cover that are not subject to prescribed tests, like the reactivity characteristics; and many others. We are doubtful that EPA could

successfully develop an electronic tool that would capture all of the waste determination nuances. Consequently, at most, it should be issued as a compliance assistance tool, i.e., as guidance, instead of as a mandated program that every generator must use and abide by. Very importantly, even if the tool were generally very comprehensive and accurate, the authorized states would need to accept its use by generators before generators would be able to confidently rely on it.

21. SQG and LQG Re-Notification (40 CFR §262.18(d))

EPA proposes to require SQGs and LQGs to re-notify every two years on Form 8700-12 and the biennial report respectively in order to update their generator site information. Industrial Generators believe that this new re-notification requirement is neither necessary nor justified.

Most states receive as part of the biennial or annual report the information EPA says it needs to obtain from SQGs and LQGs. In addition, current Form 8700-12 states in its Instructions that subsequent notification should be submitted for various changes that occur, which include a change in site contact, site ownership RCRA activity levels (VSQG, SQG, LQG, TSD, etc.), and for other reasons. See page 4 of instructions to EPA Form 8700-12. Therefore, it is not clear why EPA needs to impose a new regulation requiring re-notification when it should already have, or should be able to obtain from authorized states, the information EPA says it needs. If the problem is inadequate coordination between EPA regional offices and authorized states, that problem should be resolved directly between EPA and its authorized states, rather than EPA placing a new and largely redundant burden on generators.

22. Container Labels (40 CFR §262.14(a)(4)(viii)(B), §262.15(a)(1)(v), §262.16(b)(6), §262.17(a)(5), §262.32(c), §263.12(b), §268.50)

EPA proposes to require multiple markings/labels on hazardous waste containers. For example, under 40 CFR §262.14(a)(4)(viii)(B) for VSQGs, §262.16(b)(6) for SQGs, 40 CFR §262.17(a)(5) for LQGs, 40 CFR §262.32(c) for all generators, 40

CFR §263.12(b) for transfer facilities, and 40 CFR §268.50 for TSDFs,[3] containers would have to be labeled with:

1. the accumulation start date;
2. the words "Hazardous Waste";
3. other words that identify the contents of the containers, such as the name of the chemicals or the proper shipping name under DOT regulations;
4. an indication of the hazards of the contents, such as "ignitable;" and
5. the applicable hazardous waste codes, when the containers are shipped off-site.

Current RCRA rules require only the markings in #1 and #2 for containers in central accumulation areas. Under proposed 40 CFR §262.15(a)(1)(v), containers in satellite accumulation areas would require markings #2 and #3 above. Current RCRA rules only require markings #2 or #3 for containers in satellite accumulation areas.

Industrial generators urge EPA to give much more consideration before adding the marking requirements in #3, #4 and #5. Together, the markings in #1 through #5 (or in #2 and #3 for satellite areas) will provide more information than is necessary. The proposed additional information will work at cross-purposes with the DOT, OSHA and the Globally Harmonized System label requirements, and with the practices of generators and TSDFs, who are moving increasingly to bar coding. EPA's approach seems haphazard, i.e., put a lot of information on each container so that there might be something of value to employees, inspectors, emergency responders, waste handlers, generators, transporters and TSDFs. See 80 FR 57948-49. More consideration must be given to the negative aspects of providing more information: causing confusion; inconsistency with other applicable regulations; creating inefficiencies in work practices; greater risk from more container handling; etc.

[3] As noted in Comment 8, these standards in §262.14, §262.16 and §262.17 should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

Below we identify many of the problems and issues EPA should consider before adopting container label requirements, but our main suggestion is that before EPA decides, it should convene all key stakeholders to evaluate, discuss and recommend what information is truly useful, feasible and will not conflict with the regulations of other agencies. These stakeholders should include all of the above-referenced groups as well as representatives from DOT and OSHA, whose rules could be directly affected or contravened if EPA were to finalize its proposed rules. Industrial Generators would be pleased to participate. We are confident that this effort would lead to wiser container labeling requirements than what has been proposed.

The following issues would need further consideration:

- Hazardous waste containers vary greatly in size (several milliliters, one gallon, 55 gallons, rail cars and tank trucks). The required information becomes particularly problematic for containers that are so small that the information will not legibly fit, and may be worthless if placed on large containers, e.g., tank trucks, using small print that cannot be easily seen.

- A LQG R&D facility may have up to thousands of small individual process laboratory fume hoods, ventilated enclosures, and other spaces each of which could be a satellite accumulation area. These satellite accumulation areas may contain many small vials, lab wipes, rinses, or used chemicals that will be placed in hazardous waste containers. The hazardous waste containers range in size from milliliters, to one gallon, to larger units. Wastes collected from these experimental activities are access controlled and ‘‘under the control of the operator.’’ The contents, as well as the hazards associated with these wastes, are well known by the generator (typically the researchers), and this understanding is based upon their collective training and knowledge of the experimental processes, feedstocks, and testing, over which they have direct control. Data is recorded in their lab books, computers, and/or other integrated data management systems. It would be extremely burdensome and not practical

to require the researchers to constantly revise the "contents" labeling of this information on each individual container throughout the duration of the experiment as researchers place different materials into the container. These revisions would increase the risk for error. Additionally, there would be an increased risk to safety and more potential for exposure through the repetitive handling of these hazardous waste containers as revisions are made to identify different contents and hazard labeling information prior to the container being considered full.

- Because all hazardous waste shipments are regulated by DOT as hazardous materials, the containers will have to be labeled according to DOT standards when transported. The DOT labeling is sufficient to identify the hazard while the container is in transportation, and no additional hazard markings should be required for off-site shipments. Indeed, since most hazardous waste generators ship their waste off-site for treatment and disposal/recycling, the proposed new labeling requirements will likely have the negative unintended consequence of an SQG or LQG occasionally violating strict DOT labeling and marking regulations. This is because the generator's addition of other words that *"identify the contents of the containers"* and indicate *"the hazards of the contents"* as required by the EPA proposed rule cannot, under DOT rules, remain on the container if the *"marking or label, which by its color, design, or shape, could be confused with or conflict with a label prescribed by this part."* See 49 CFR §172.401. While it is possible that an SQG or LQG could place a label on a container and then remove or cover-up the label before offering the container for transport, this would be a laborious task since most labels will be designed to permanently stick to containers in all kinds of weather conditions, and there is a chance that a generator might miss removing a prohibited label or forget to cover it up. EPA should not promulgate new container labeling requirements that likely will cause conflict with an existing DOT labeling regulation and thereby result in an SQG or LQG violating DOT regulations.

- For containers that remain on-site, marking per OSHA standards should be considered as an alternative to what has been proposed.

- Labeling with a "waste profile number" or bar code should also be considered because of the efficiencies that results from using scanning equipment that increasingly is being used at TSDF and generator sites. Indeed, most TSDFs currently use unique drum identification systems in bar codes to track each drum once it is received.

- Since RCRA regulations have never required a specific format, size or color for the label, many Industrial Generator companies have created their own labels. Requiring more information on containers, which would be presented in non-standardized formats, sizes, colors, etc., will create confusion. Further, the companies would be forced to update and replace their existing label inventory to accommodate the information required in #3, #4 and #5 above. Also, all of the training, standard operating procedures, and job aids that instruct operators how to properly label a hazardous waste container would require update, and personnel would have to be retrained prior to the effective date of the new rule. This is an additional burden that the RIA did not consider in the cost to generators.

- The utility of adding hazardous waste codes to each container when it is sent off-site needs further consideration. Each container will already have complete DOT labeling and markings, and be accompanied by a hazardous waste manifest where up to six EPA hazardous waste codes must be identified. In addition, some wastestreams may have well over twenty or thirty different EPA waste numbers (e.g., ash from a hazardous waste incinerator). It seems unlikely that adding so many EPA waste code numbers to a container would be of any useful benefit. Further, as noted above, requiring an SQG/LQG to place four character long, alpha numeric, codes on a container, of arbitrary size, shape, text color, and label background color, will likely result in the SQG/LQG occasionally violating

DOT labeling/marking regulations at 49 CFR §172.401, which prohibits confusing or conflicting labels.

- Hazardous waste codes on containers do not provide usable information to the public or emergency responders. The hazardous waste codes are already identified on the shipping papers, to which emergency responders can refer.

- The TSDFs that receive the containers will have the waste codes identified in the accompanying manifest, in waste profiles that would have been provided before shipment, and in LDR documentation. They will not need waste codes on the containers themselves.

To summarize, Industrial Generators urge EPA to convene one or more sessions with all stakeholders, including DOT and OSHA, to address these issues and potentially other stakeholder issues before requiring more information to be placed on containers by generators.

23. Labels for VSQG Containers Sent to a Related LQG (40 CFR §261.14(a)(viii)(B))

For all of the reasons noted directly above, as well as the additional reasons noted in this Comment, Industrial Generators do not support the proposed very prescriptive requirements at 40 CFR §261.14(a)(4)(viii)(B) whereby a VSQG that ships containers of hazardous waste to an LQG under the same control would have to label each container with:

1. the words “Very Small Quantity Generator Hazardous Waste”;
2. additional words that identify the contents (e.g., Spent Acetone”);
3. words that identify the hazard (e.g., “Ignitable”); and
4. the applicable hazardous waste code (e.g., D001).

Importantly, VSQGs are not required to put any of these labels on hazardous waste containers today when sent to third-parties, like a RCRA permitted TSDF or a municipal

facility that is authorized to receive VSQG hazardous waste. See 40 CFR §261.5(g). EPA has not explained why all of these container labels are necessary when the VSQG sends its hazardous waste to a related (under the control of) LQG, but not required when the same containers are sent to an unrelated TSDF or authorized municipal facility. Indeed, by virtue of the control relationship between the VSQG and the LQG, the LQG can readily obtain whatever information it might need from the VSQG to facilitate proper management of the waste after the LQG receives it. EPA should not require container labels when the VSQG sends its very small amount of hazardous waste, normally one or two containers, to its related LQG.[4]

24. Notification for VSQG Containers Sent to a Related LQG (40 CFR §262.14(a)(4)(viii)(B)(1), §262.41(a) and §262.17(g)(11)

Industrial Generators respectfully note that EPA has gone too far with the notification requirements it proposes for VSQG hazardous waste that is sent to a related LQG. Any one of the three requirements would achieve the objective EPA identifies of providing notice of the VSQG hazardous waste that is sent to an LQG. Specifically, EPA proposes:

1. the containers be marked as "Very Small Quantity Generator Hazardous Waste" (proposed 40 CFR §262.14(a)(4)(viii)(B)(1));
2. the LQG notes in its biennial report that it receives hazardous waste from a VSQG (proposed 40 CFR §262.41(a); and
3. the LQG gives EPA notice 30 days before receiving hazardous waste from a VSQG (proposed 40 CFR §262.17(g)(1).

Any one of these three requirements would put EPA and/or its inspectors on notice that the LQG has received hazardous waste from a related VSQG; only one should be

[4] As noted in Comment 8, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

required. VSQG hazardous waste is a small volume of material generated by entities that have relatively limited familiarity with RCRA, and as such, it should not be subject to unnecessary regulatory burdens.[5]

25. Monitor and Log for Tank Accumulation (40 CFR §262.16(a)(6)(ii)(C) and 40 CFR §262.17(a)(5)(ii)(C))

The proposed rule to require SQGs and LQGs to monitor and keep records of each time hazardous waste is added into a tank is unworkable for the many tanks that receive a continuous flow of hazardous waste or receive frequent additions of hazardous waste, which is the nature of many hazardous waste tanks. For example, at a batch chemical manufacturing plant, it is common to have one or more tanks for receipt of compatible liquid hazardous waste from various batch production operations. At any time during the day and from any one of the batch operations on the plant, a small amount of liquid waste might be conveyed to a less-than 90-day tank for centralized accumulation of compatible hazardous wastestreams. These liquid hazardous wastes typically will originate from numerous, different places within a plant, and flow through multiple, different pipes until they reach the common collection tank. Typically, each conveyance and the amount of conveyed liquid are not monitored by humans or electronic monitors because there is no need to do that. The proposed rule would require monitors to be placed in the inlet(s) to each receiving tank to measure flow volume, and that information would then have to be logged or recorded, but for what purpose?

Such measuring and recordkeeping is not needed to comply with less than the 90-day or 180-day rules for LQGs and SQGs. Those rules require that an accumulation tank for a large quantity generator be emptied at least once every 90 days for an LQG and at least once every 180 days for an SQG. Those rules can be met with records showing that an LQG tank is emptied every 90 days and an SQG tank is emptied every

[5] As noted in Comment 8, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

180 days. Plants already have, or can readily create, records showing that a hazardous waste tank was emptied on a particular date. For example, it is common to have records that a transporter pumped out a hazardous waste tank and transported the waste off-site on a particular date, and that the same tank was again pumped out on a subsequent date. When viewed together, those two records can conclusively show that the tank was emptied within 90 days for an LQG or 180 days for an SQG. So long as it is shown that the tank was emptied every 90 or 180 days, it really does not matter when specific volumes of the hazardous waste were conveyed into the tank; the volume certainly was not residing in the tank for more than 90 or 180 days if shipping records show that those tanks were emptied within those timeframes.

Thus, there is no reason to create the extremely burdensome requirement to install expensive monitoring equipment, and then monitor and log the accumulation start date for every hazardous wastestream that is conveyed to a tank. This is particularly true for accumulation tanks that constantly are receiving small volumes of liquid wastes from various operations or receiving liquid waste on a continuous or near continuous basis. If a generator wants to monitor and log or record every time waste is added to a tank, that is fine, but it should not be required because the information is not needed to demonstrate that an LQG tank is emptied every 90 days or that an SQG tank is emptied every 180 days.[6]

26. Documentation of Waste Accumulation Unit Inspections (40 CFR §262.16(b)(2)(iv) and §262.17(a)(1)(v))

Industrial Generators do not object to the proposed language in 40 CFR §262.16(b)(2)(v) and §262.17(a)(1)(v) that would merely incorporate into the reorganized rules for SQGs and LQGs the existing requirements related to inspections

[6] As noted in Comment 8, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

and the remediation that should be taken if a release is found.[7] But EPA has also requested comment at 80 FR at 57952 on whether also to require a record of each inspection that documents other things, for example: (1) *"a description of any discrepancies or problem areas encountered in the inspection"* (unclear what that means); (2) *"corrective actions taken"* even though such corrective actions could be taken over months or years after an initial inspection; and (3) whether there is a "secondary containment system," even if secondary containment is not a regulatory requirement. In essence, EPA is attempting to expand through an overly-prescriptive inspection record the regulatory requirements regarding what must be addressed during an inspection. There is neither a record basis for nor a need to expand the inspection requirements or to mandate their documentation in the inspection records.

Finally, we do not think a signature should be required on the inspection forms. However, if required, the rule should allow the "signatures" to be any form of employee identification. Many plant inspection forms are completed by personnel electronically and they sign by entering employee identification numbers. EPA's rule should accommodate this common practice.

27. Location of Inventory Records for Tanks, Drip Pads, and Containment Buildings (40 CFR §262.16(b)(6)(ii)(D) and §262.17(a)(5)(ii)(D))

EPA proposes in 40 CFR §262.16(b)(6)(ii)(D) and §262.17(a)(5)(ii)(D) that SQGs and LQGs keep their inventory records and other records associated with tanks, drip pads and containment buildings "in close proximity to the tank, drip pad or containment building." This is not practical or common, particularly for records associated with hazardous waste tanks. Such records are typically kept in a control room or a central file location and those all often are not in close proximity to the tanks, drip pads and containment buildings. As with other records kept at a facility, EPA should allow them to

[7] As noted in Comment 8, however, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

be kept in a central location that makes the most sense from an operational standpoint. On an inspection, the generator would be readily able to produce those records regardless of them being kept in a central office location or next to the particular hazardous waste units. Further, keeping them near the hazardous waste units presents many more opportunities for them to be lost or damaged by the elements.

28. Consolidation of Closure Regulations (40 CFR §262.17(a)(8))

EPA proposes to consolidate its closure regulations for units used by LQGs in a new 40 CFR §262.17(a)(8). Industrial Generators support consolidation and simplification of these requirements into a single place in the regulations.[8] The concept in proposed §262.17(a)(8)(ii)(A)(1) that closure should be undertaken *"to the extent necessary to protect human health and the environment,"* however, should be moved up to subparagraph (A). That way, this important risk-based concept would more clearly apply to all of the requirements in §262.17(a)(8)(ii)(A), not just to its subparagraph (1). For nearly 20 years, EPA has recognized that decontamination during closure is to be done to risk-based standards and not to non-detect or background levels. See Memo from E. Cotsworth, "Risk Based Clean Closure" (March 16, 1998). Moving to subparagraph (A) this concept that closure decontamination should be done *"as necessary to protect human health and environment"* will help to clarify that the decontamination work done under subparagraphs (A)(1), (A)(2) and (A)(4) are all to be risk-based.

29. Closure Regulations for LQGs Accumulating Hazardous Waste in Containers (40 CFR §262.17(a)(8)(ii)(A)(4))

Under proposed 40 CFR §262.17(a)(8)(ii))(A)(4), an LQG that cannot achieve clean closure for a container storage area would have to manage that area as a landfill. This would mean that, among other things, the LQG would be required to: (1) install

[8] As noted in Comment 8, however, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

groundwater monitoring wells upgradient and downgradient from the container area; (2) monitor the wells 30 years or longer during a post-closure care groundwater monitoring program; (3) obtain a post-closure permit to conduct the post-closure groundwater monitoring; (4) by virtue of the permit, conduct solid waste management unit (SWMU) facility-wide corrective action; and (5) maintain financial assurance for the post closure care.

When EPA adopted its initial regulations, it properly distinguished between generators that store small quantities of hazardous waste in containers and generators that store or treat hazardous waste in much larger quantities in tanks, landfills, surface impoundments, incinerators, etc. LQGs that store hazardous waste in containers should not be subjected to the most onerous aspects of RCRA, such as post-closure groundwater monitoring, site-wide corrective action, and RCRA permitting, especially through this rulemaking, which purports to merely consolidate and clarify existing regulations. This proposal is a major departure from existing regulations. Imposing these requirements on generators would go well beyond 42 U.S.C. §6922, wherein Congress identified only six categories of regulations that EPA should promulgate for generators. None of those six include closure, or any of the other TSDF programs that would be triggered. Thus, these closure regulations should not be adopted without full consideration of the legal and practical consequences, and a record that will support the significant consequences of this rule change.[9]

30. Notification by LQGs Upon Closure of the Hazardous Waste Accumulation Units (40 CFR §262.17(a)(8)(i))

EPA proposes to require LQGs to notify EPA no later than 30 days prior to closing any unit that is used to accumulate hazardous waste, and within 90 days after

[9] As noted in Comment 8, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

closure of the unit.[10] Although notification of closure of generator accumulation unit sounds simple, it would have widespread implications.[11]

Less-than ninety-day accumulation occurs not only in well-defined tanks and at a central container storage area, but there are many other areas on a plant site where temporary less-than ninety-day accumulation occurs for short periods of time. Plants routinely use less-than ninety-day hazardous waste container accumulation areas for use by contractors during maintenance activities. Examples include lead paint abatement, sandblasting of equipment and tanks so that repairs can be made, the application of industrial-strength coatings, the cleanout of process equipment and raw material and product tanks prior to repair. Short-term less-than ninety-day accumulation areas are also commonly used in R&D projects. Most of these short-term less-than ninety-day accumulation projects occur within buildings where there is full containment, or outside on concrete or asphalt pads at or near plant operations that include secondary containment and/or drainage and collection systems to capture any releases. Thus, although the likelihood of a release during these short term projects is very minimal, to the extent a release occurs, it will typically be contained. Moreover, RCRA-trained personnel will be around the hazardous waste accumulation activity when it is occurring. Further, any release into the environment of more than 100 pounds of hazardous waste would require RQ reporting under CERCLA, and any release may also trigger action under the site's contingency plan. Thus, it is very unlikely that there will be a release from these short-term less-than ninety-day activities, and if there is one, it will be promptly addressed by on-site personnel and be contained.

In addition to these short-term accumulation areas associated with plant operations, short-term less-than ninety-day accumulation areas are created in connection with RCRA corrective action, closure, plant construction and other on-site

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[10] As noted in Comment 8, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

[11] We assume that this notification requirement would not apply to satellite accumulation areas since they are not subject to a closure requirement. EPA should confirm this in the final rule.

projects which might result in the excavation of contaminated soil or debris. Typically near the area of excavation, a less-than ninety-day area will be created to place excavated contaminated soil, gravel, asphalt, concrete and debris into roll-off boxes, dump trucks or smaller containers. These less-than ninety-day areas are almost always within the area of contamination (AOC), and sometimes within the area of a previously-defined solid waste management unit (SWMU) that is subject to corrective action or a hazardous waste management unit (HWMU) that is otherwise subject to closure. When that less-than ninety-day accumulation area ceases to be used, it would not be necessary to give notice that it will undergo closure because the whole area is undergoing closure or some other remedial project. Nor would it be necessary to separately undertake remediation at less-than ninety-day area in most cases. The overall remediation will already be under the oversight of plant personnel and in many cases the agency pursuant to order requirements or other regulatory programs. This is why EPA has long recognized that accumulation of hazardous waste during remediation within an existing AOC is not itself a new accumulation unit and would not require a permit or closure. See "Management of Remediation Waste Under RCRA," EPA 530-F-98-026, p. 3 (Oct. 1998).

We estimate that at a typical LQG, there would on average be approximately three of these short-term discrete less-than ninety-day accumulation areas created each year for the type of plant operations or remediation related projects described above. Based on the latest 2011 data from the National Biennial RCRA Hazardous Waste Report, there were 14,262 LQGs in the United States. If each of these LQGs has to submit a closure notification for these temporary less-than ninety-day areas, over 40,000 notifications a year would have to be created and submitted by the LQGs and received by EPA or authorized states each year. Even if only half of the LQGs create an average three short-term less-than ninety-day areas, that is still 20,000 notifications. The RIA to this proposed rule did not include a calculation of the regulatory burden, much less the agency resources, that would be required by this notification requirement.

Regarding the 30 day prior notice requirement, in many cases, it is not feasible to give notice 30 days prior to closing these temporary less-than ninety-day units. These

temporary less-than ninety-day accumulation areas are created for specific project purposes. In most cases, the projects will last a few days or a few weeks. It is not practical for the project personnel, especially third-party contractors who often do these projects, to give the agency notice and wait around for the thirty days to expire before they begin the closure activities of removing the hazardous waste and contaminated soil and debris. Often these projects occur in tight spaces where the activity interferes with ongoing operations and may even require shutdown of certain operations. Many of the projects cannot tolerate a 30 day prior notice requirement because that will mean extended interruption of plant operations.

Industrial Generators are also concerned that the notification will result in agency officials directing closure operations in a manner that leads to unnecessary sampling, extended delays and excessive remediation with ill-defined endpoints. Industrial Generators understand that while they are conducting these less than ninety-day accumulation activities, if releases occur that could impact the environment, such as into underlying soil, they are responsible for recovering the released material and removing any impacted soil, and they will promptly do that. But such releases are rare, and because of the prompt response, do not require extensive remediation. In almost all cases the accumulation occurs in tanks or containers that are kept closed when not in use, personnel are around when hazardous waste is being added or removed from the tanks or containers, and there are no releases into the environment.

Nonetheless, inspectors might take the position that the site owner must prove the negative -- that there has been no release into the nearby soil. To prove this, the inspector may require samples to be taken, which often means drilling through secondary containment that will affect the future integrity of those structures. The unnecessary additional costs and delays associated with sampling, awaiting results, evaluating the results against various risk-based standards, and reporting to the Agency will make what was supposed to be just a short-term less-than ninety-day accumulation effort associated with a specific plant project, like a tank clean out, into a much bigger, longer and complex project.

For all the foregoing reasons, EPA should not require in a final rule that notification be given by LQGs of closure of less-than ninety-day accumulation areas.

31. Applicability of Preparedness, Prevention and Emergency Procedures for LQGs (40 CFR §262.16(b)(8)(ii) for SQGs and 40 CFR §262.250 for LQGs)

Regarding the specific proposed changes, Industrial Generators support the clarification that the Preparedness, Prevention and Emergency Procedures apply only to areas where hazardous wastes are managed.[12] We note, however, that the use of the phrase *"generated or accumulated on site"* in the proposed rules may be misinterpreted as including satellite accumulation areas. EPA should delete the words *"generated or,"* and make it clear these requirements do not apply to satellite accumulation areas.

32. Arrangements with Local Authorities (40 CFR §262.256 for LQGs and §262.16(b)(8)(vi) for SQGs

Industrial Generators support the clarification in the proposed rule that an *"SQG and an LQG must attempt to make formal arrangements within its Local Emergency Planning Committee (LEPC) unless there is no LEPC, the LEPC does not respond, or the LEPC determines that is not the appropriate organization to make an arrangement with, and in that case, the SQG and the LQG should attempt to make arrangements with the local fire department and other relevant emergency responders, such as police and hospitals."*[13] But Industrial Generators do not support the categorical language EPA has proposed whereby the SQG and LQG must make arrangements with the LEPC or other relevant emergency responders. Despite reasonable efforts, the LEPC or other relevant emergency responders may be unwilling to make arrangements with the SQG or the

[12] As noted in Comment 8, however, these standards should not be identified in 40 CFR §262.16 as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

[13] As noted in Comment 8, however, these standards should not be identified in 40 CFR §262.16 as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

LQG. In that case, the SQG or the LQG could be liable for violating this proposed requirement even though it has done everything reasonably within its power to obtain agreement with the LEPC or other emergency responders regarding the response plan.

We suggest EPA change the regulatory language to state that the SQG and LQG must *"use all reasonable effort"* to make arrangements with the LEPC or relevant emergency responders. This is stronger language than the current rule, which states that there must be an *"attempt to make arrangements,"* but it does not penalize the SQG and LQG if, despite their best efforts, the LEPC or other relevant emergency responders refuse to respond to repeated requests to make arrangements or to agree to reasonable arrangements.

33. Documenting Arrangements with LEPC (40 CFR §262.16(b)(8)(vi)(B) for SQGs and §262.256(b) for LQGs)

These proposed rules would require an SQG and an LQG to maintain records documenting the emergency response arrangements that have been made with the LEPC or other emergency responders. EPA seems to believe that it needs this documentation to confirm that such arrangements exist. This is an unnecessary requirement, however, because the arrangements will be spelled out in the contingency plan. Because there is no need for additional documentation, Industrial Generators oppose finalizing this redundant requirement.[14]

34. Contingency Plan Executive Summary (40 CFR §262.262(b))

EPA proposes that a new LQG, i.e., one that first becomes an LQG after publication of these rules in the Federal Register, must submit an Executive Summary of

[14] As noted in Comment 8, these standards should not be identified in 40 CFR §262.16 as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

the Contingency Plan to the LEPC or other appropriate emergency responders. The Executive Summary must contain information on eight different topics.

Creating an Executive Summary, particularly one in a highly factual document like a Contingency Plan, may cause the emergency responder who just reads the Executive Summary to miss important information. At a small plant, an Executive Summary would add pages with repetitive information to what is likely already a manageable contingency plan. At a very large plant, an Executive Summary would have to be extensive to cover the required information, thus defeating its purpose. For example, at an 800 acre plant, there could be hundreds of water supply points that would have to be identified in the Executive Summary.

We suggest that EPA simply require an LQG to have a Table of Contents or Index in its Contingency Plan if it is beyond an easily readable length, e.g., 20 pages. This will enable an emergency responder to easily find the relevant section of the Plan that bears on whatever issue the emergency responder needs to address.

Further, regarding the request for extending this proposed executive summary requirement to SQGs, just as we see no reason for LQGs to have to develop an Executive Summary, it is even less necessary for SQGs to develop an Executive Summary since their Contingency Plans are likely to be relatively shorter.

Finally, if EPA nonetheless decides to require an Executive Summary, it should change the proposed language in 40 CFR §262.262(b)'s last sentence to "The Executive Summary <u>may</u> include the following elements as agreed between the LQG and the LEPC." The LEPC, not EPA, should determine what information is important for it to have in an executive summary, if one is required at all.

35. Elimination of Employee Personal Information in LQG Contingency Plans (40 CFR §262.261(d))

Industrial Generators fully support EPA's proposal to minimize employee personal information from LQG Contingency Plans. Because each coordinator will surely have a mobile phone, identifying the names and emergency contact telephone number for all emergency coordinators is all that is needed. This approach also better protects emergency coordinators whose privacy and security could be infringed if their home address and telephone numbers are made public, as they would be in a Contingency Plan.

For the same reasons, Industrial Generators request that EPA also modify 40 CFR §264.52(d) and §265.51(d) to eliminate the need for unnecessary employee personal information to be in the Contingency Plans at permitted and interim status TSDFs. Making this change will eliminate many Class 1 permit modifications, and their corresponding administrative burdens to TSDFs and regulators.

36. 24-Hour Emergency Coordinator (40 CFR §262.261(d))

In a situation where the facility has an emergency coordinator on duty 24/7, EPA is also considering not requiring that the names of the individual emergency coordinators be identified in the Contingency Plan, but rather that only the name of the position of the emergency coordinator be identified. That way, LEPC entities will be able to contact the emergency coordinator that is on duty by asking to speak to the person who holds the identified position and is on duty. EPA requests comment on approach. See 80 FR 57960/col. 3,

Industrial Generators support this approach. Not only will the LEPC caller find the emergency coordinator who is on duty when he/she calls, this rule change would minimize a common area of current non-compliance. Plant emergency coordinators frequently change positions or contact information. Under the current rules every time a personnel change occurs, the Contingency Plan is supposed to be updated. Too often,

this “slips through the cracks,” and an unintentional violation occurs. Because it is easy to reach the emergency coordinator by asking for him or her by title, the proposed rule change would still result in LEPC entities reaching whom they need to contact. Thus, Industrial Generators support the option to include the “staff position” rather than the name of the emergency coordinator where a facility operates 24/7.

37. Location of Emergency Response Equipment (40 CFR §262.16(a)(8)(ii) for SQGs and §262.252 for LQGs)

Industrial Generators agree with and support EPA's proposal to give SQGs and LQGs flexibility to determine the most appropriate locations within the site to locate emergency response equipment. Emergency response equipment and supplies do not need to be located everywhere hazardous waste is managed. One or more centralized locations can result in better response.[15]

38. Consideration of Alternative Evacuation Routes

EPA requests comment at 80 FR 57961 regarding the extent to which an SQG and LQG should consider alternative evacuation routes and sheltering in place as part of its Contingency Plan. Industrial Generators believe that a well-thought-out and effective Contingency Plan should include consideration of all feasible evacuation routes and sheltering in place in light of the multiple events that could trigger the Plan, as well as the effects of weather, traffic, and other contingencies on evacuation routes. It is not necessary, however, to identify every alternative in the Contingency Plan, but rather it is appropriate that the Plan confirm that alternatives have been considered, and identify those that are viewed as the most appropriate, including potentially shelter in place, under certain circumstances. Also, based on certain geographic locations and access

[15] As noted in Comment 8, however, these standards should not be identified in 40 CFR §262.16 as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

road limitations, there may be only one logical alternative evacuation route, and if that is the case, that should be stated.

39. Electronic Contingency Planning Application

EPA requests comment at 80 FR 87961 on the usefulness of an electronic contingency planning application. Industrial Generators do not support the Agency devoting significant resources to developing an electronic application for Contingency Plans or requiring that the Contingency Plan be provided to LEPCs electronically. During an emergency, power and communications may be lost or disrupted. If the information is only accessible electronically, this could be a real problem. Further, there are already commercial efforts to provide contingency response information electronically, so it seems unnecessary for EPA to devote its resources to this effort.

40. Applicability of Personnel Training

At 80 FR 57963, EPA requests comment on whether specific job functions should be identified in the regulations as requiring hazardous waste training and a written job description. Industrial Generators oppose EPA identifying through regulation which positions require training and a written job description. This would be an unwelcomed intrusion into facility business decisions, and the flexibility needed to appropriately staff and train employees depending on site specific circumstances. The personnel training requirement should be performance based, not prescriptive. Site specific management hierarchy and work role descriptions will determine appropriate personnel training needs. Prescriptive rules also would likely lead to confusion rather than clarity on what each employee is expected to do.

As to operators in satellite accumulation areas, they are very familiar with the hazards of the waste they generate due to safety training and regulation over the use of those same materials in the process that generate the waste. For example, a chemist completing bench top lab experiments is required to be aware of the hazards of the material used in the experiment per OSHA HAZCOM regulations at 29 CFR 1910.1200.

The training satellite accumulation area operators will need and their job descriptions are quite specific, and should not be prescribed by general rules.

41. Online Personnel Training (40 CFR §262.17(a)(7)(i)(A))

Industrial Generators strongly support EPA's proposal to add language to new 40 CFR §262.17(a)(7)(i)(A) that would allow training to occur online via a computer. This updates the personnel training regulations to reflect the way in which many employees are currently trained.[16]

42. Exceptions to Keeping Containers Closed in Satellite Accumulation Areas (40 CFR §262.15(a)(4))

Industrial Generators strongly support EPA's proposal to provide an exception to having to keep containers that are in satellite accumulation closed all times. The proposed new exception that allows venting a container when necessary for proper operation of the equipment or to prevent dangerous situations, such as build-up of extreme pressure, are important improvements that recognize that closing a container can, in some cases, increase safety hazards or interfere with the proper operation of manufacturing equipment.

This rule also should be extended to SQG, LQG and permitted storage areas (in addition to satellite areas) for cases where venting is necessary to prevent dangerous situations, such as extreme pressure or heat buildup. For example, wet incinerator ash must dry and cool after it is placed in roll-off dumpsters and before it can be landfilled. Tarps placed on these dumpsters would melt until the ash cools down and would prevent drying. Due to the volumes involved, and the time necessary for cooling down and water evaporation, this cannot be done in a satellite accumulation area.

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[16] As noted in Comment 7, however, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

43. Moving Containers Within Three Days From Satellite Accumulation Areas (40 CFR §262.15(a)(6)(i))

Industrial Generators urge EPA to allow three business days (Monday through Friday, except holidays) instead of three calendar days to remove the excess hazardous waste above the 55-gallon limit from the satellite accumulation area. A requirement to remove the excess within three calendar days presents problems when waste is generated and the next two or three days are weekends and/or holidays. In that case, plant personnel often will not be available to remove the excess from the satellite accumulation area until they return to work on day three (after a normal weekend) or day four (after a holiday weekend).

In addition, many generators that accumulate in the satellite accumulation area do not have less-than 90-day storage areas. They call in a third-party hazardous waste handler or transportation company to pick-up and remove waste when the 55 gallon limit is exceeded. These third-parties are also usually not working over weekends or holidays, and it may also take a few days to schedule a pick up.

Allowing some excess to remain for no more than three business days should not create any significant additional risk, because the hazardous waste in satellite accumulation areas will be properly identified, containerized, and the containers will be closed. Further, allowing three business days recognizes the situations where plant personnel or third-party vendors are unavailable to move the excess from the satellite area.

44. Meaning of "Under the Control of the Operator" (40 CFR §262.15(a))

EPA provides several examples of areas that would qualify as satellite accumulation areas where the operator controls access to the area with an access card, key or a locked cabinet. Although we agree that in these situations the satellite accumulation area is under the control of the operator, there are many other legitimate

satellite accumulation areas where access is not proximately gated or controlled by lock and key. For example:

- It is common to have a drum to receive waste residue at the end of a production line. Although that drum typically will be within a building that likely has keyed access, and the production process will be on a plant site that has keyed access, fencing and security, the area where the drum is located itself will not have separate keyed access or typically be surrounded by a fence.

- There are many scenarios where a satellite accumulation area is created for a specific maintenance activity, pilot project and R&D project, and then discontinued when the activity or project is completed. Requiring separate fenced, locked, etc., access defeats the intent of allowing safe, immediate containment of waste for these short-term activities and projects, and would not be practical.

- It is common for manufacturing buildings to be controlled by card access to all outside doors and the inside production facilities. The production facilities may have several different satellite accumulation areas. Not all the manufacturing operations are 24 hours a day, even though the access system is engaged 24 hours a day. When operations personnel are not present, janitorial, maintenance and security staff need access to the production areas in order to perform their duties. None of those duties involve handling the waste in the satellite areas, but they have access to the same space.

- Satellite accumulation containers in laboratories, R&D areas and maintenance shops are usually not controlled by access keys or lock and key. For example, entry to a laboratory and R&D project is

generally restricted to the lab technicians and chemists performing R&D or QA/QC evaluations. Maintenance shops typically have a satellite container for all mechanics and millwrights to place contaminated PPE and industrial wipes. These containers are secured with a lever-lock lid to keep containers closed, but all shop personnel can access the container(s).

EPA has discussed the term "under control of the operator" in guidance documents (see RO 11728). EPA states: *"The condition that wastes accumulated under the satellite provision 'be under control of the operator of the process generating the waste' is met provided the generator demonstrates that the personnel responsible for generating/or accumulating the waste have adequate control over the temporary storage of these wastes. The EPA recognizes that for many wastes, the person who first generates the waste may not be the same person responsible for the accumulation of all of these wastes; rather, another worker may have responsibility of overseeing the temporary storage of wastes."* The Agency goes on to state that *"the goal is that this temporary accumulation is performed responsibly and safely, with adequate oversight and control."* Requiring keyed access to satellite accumulation areas is not necessary to meet these objectives.

Further, Industrial Generators do not think that the current rule requires that the satellite accumulation container(s) be surrounded by a fence or controlled with keyed access. This is because the phrase "under the control of the operator of the process generating the waste" means not only an individual operator but also a company operator. Under 40 CFR §260.10, an *"operator"* is *"the person responsible for the overall operation of a facility,"* and a *"person"* means not only an individual but also a *"firm," "joint stock company," "corporation" or "partnership."* Under these definitions, a company that controls the entire operation of a process would be the operator of the process that is generating the satellite accumulation waste. In that case, the requirement in 40 CFR §262.15(a) that the containers be *"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"* would be met where the operator is the company

that is responsible for the process, and where that process either itself has restricted access or is part of a larger facility that has restricted access. We request that EPA confirm this interpretation in the final rule.

If, EPA does not agree with and confirm this interpretation that the operator can be the company, then the examples it has given simply do not reflect the many situations where satellite accumulation occurs in areas that are not themselves locked or keyed off separately with restricted access. In that case, the examples EPA provides create additional confusion and should be withdrawn, or other examples should be added where a satellite accumulation area exists even though there is no keyed, fenced or locked access control of the immediate area.

45. Daily Use Containers in Laboratories

In the final rule, EPA should allow for the use of a “daily use" container in laboratory and R&D operations. Typically, there are many laboratory or R&D stations within a building on an Industrial Generator’s site. For example, there might be a four-story laboratory building with four laboratory offices/stations on each floor for a total of 16 laboratory stations. Also assume that at each station a small amount of hazardous waste is generated almost every day. One way of setting this up is to have 16 separate satellite accumulation areas, one at each station. A better way to handle the hazardous waste, however, is to have a small waste bucket with a cover at each station, and at the end of each day allow for the liquid waste to be poured from the buckets into appropriate satellite accumulation containers that are located within the building. When the total accumulation exceeds 55 gallons, the excess, and likely all hazardous waste in the containers, would be removed within three days. This daily consolidation would provide a safer work environment not only for the lab personnel, but also for janitorial and maintenance personnel who work in the laboratory or R&D facility after normal business hours. This approach would also save room within each laboratory station, and it would result in more efficient transfer of hazardous waste.

In the past, EPA has said that hazardous waste cannot be moved from one satellite accumulation area to another. EPA should use this rulemaking opportunity to modify that limitation and provide flexibility to use "daily use" containers in laboratories and R&D work stations, and allow the contents from such containers to be collected in one or more "central" satellite accumulation areas.

46. Prohibition on Disposal of Liquids in Municipal Solid Waste Landfills (40 CFR §262.14(d) and §262.35)

EPA has proposed a new rule that states *"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."* 40 CFR §262.14(d) and 262.35.[17] The language in the parentheses, *"(whether or not sorbents have been added)"* might cause confusion. This phrase might be interpreted to mean that even if sorbents are added and the liquid is absorbed so that there is no longer any free liquid, the hazardous waste still cannot be placed in the landfill. Of course, so long as there is no free liquid, placement of the hazardous waste is allowed in a landfill. We suggest simply striking the parenthetical phrase. Without it, it is clear that liquid hazardous waste or any hazardous waste containing free liquids cannot be placed into a landfill.

47. Changes to Generator Category as Result of an Episodic Event (40 CFR §262.230-232)

Industrial Generators strongly support EPA's proposed rule to allow a VSQG or SQG to manage hazardous waste it generates during an episodic event without causing the generator to change its status. We agree with EPA that episodic events occur that can cause an amount of hazardous waste that is larger than usual to be generated. For example, manufacturing facilities regularly have periodic shutdowns for maintenance.

[17] As noted in Comment 8, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

While this may occur once per year, it is also not unusual for a second maintenance shutdown or some unplanned event to occur which generates hazardous waste. EPA should allow two episodic events per year with a petition for a third.

Allowing a second episodic exception to occur without changing the generator's status should also help to compensate for an inherent problem with compliance with the limits. It is common that a VSQG will not discover that it has exceeded its limit of, for example, 100 kg per month of non-acute hazardous waste until the end of the month or even after the end of the month. This may be because a generator does not count how much waste it generates each day as it is being generated, but rather at the end of the month when an inventory is performed for hazardous waste that has been shipped or will be shipped off-site. It may also result from a newly-generated waste having to be sampled and tested to determine if the waste exhibits a hazardous waste characteristic, and it takes about two weeks to receive the test results. Under the rules, it would appear that if a VSQG or SQG does not discover that it has exceeded its limit until the end of the month or later, the VSQG/SQG would actually have been out-of-compliance since the beginning of that month. Further, when the generator discovers that it has exceeded its limit, it is usually not possible to come into compliance immediately or even within a few weeks with all of the requirements of the next higher generator level. For example, obtaining a contingency plan arrangement with the LEPC can often take several months, but that would be required if a VSQG has to meet SQG standards.

EPA should confirm that the episodic exceedance exception is broad enough to cover these exceedances that cannot reasonably be determined until after the month has begun. This way, a generator would not be out of compliance on day one of the month when they could not reasonably know that they would exceed the limit until much later in the month or even into the following month. This is also another reason why EPA should allow generators two episodic exceedances a year with an opportunity to petition for a third instead of just the one that has been proposed.

Regarding the proposed requirement to complete management of the episodic hazardous waste within 45 days from the first date of generation, this is also often not

feasible. The waste must be classified and samples may have to be sent off-site for analysis. Then a TSDF that can receive the hazardous waste must be identified, and often a waste profile and/or sample of the waste must be sent to the TSDF for approval. Then transportation must be arranged. EPA should revise the regulation to allow 90 days to send off-site the hazardous waste generated in an episodic event.

Also, some events may last more than one day. For example, an extended maintenance shutdown period may last several days or even a month depending on the type of facility and extent of maintenance. For this reason, EPA should also allow for the time period to begin and the end of the episodic event (i.e., when the generation of hazardous waste has ceased), or consider this situation as another reason to extend the time period to 90 days after initial generation.

Finally, we note one minor typo; the proposed language in 40 CFR §262.232(a)(6) and (b)(5) that refers to a 30-day extension of the 45-day period should reference that the extension is granted pursuant to §262.234, not §262.233 as now written.

48. 50-Foot Setback for Ignitable and Reactive Hazardous Wastes (40 CFR §262.17(a)(1)(vi)(A))

Industrial Generators support EPA's proposal to allow LQGs to obtain a written waiver from the local fire department that would allow ignitable or reactive hazardous waste to be placed closer than 50 feet from the site's property line, which is the current setback requirement under 40 CFR §262.34(a)(1)(i) and §265.176.[18] EPA is correct that a site's dimensions may sometimes make this 50-foot setback requirement impossible or impracticable to meet. The local fire department will be in a good position to decide whether a waiver is appropriate on a case-by-case, site specific basis.

[18] As noted in Comment 8, however, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

Regarding EPA's request for comment on whether this waiver should be allowed for TSDFs, Industrial Generators believe TSDFs are in as much need for this flexibility as an LQG, and therefore, EPA should extend the waiver option to them as well.

49. "No Smoking" Signs (40 CFR §262.17(a)(vi)(B))

EPA should provide an exception for tobacco free sites to the proposed rule to require LQGs to post "No Smoking" signs wherever there is a hazard from ignitable or reactive hazardous waste. Signs requiring "No Smoking" are unnecessary at a site that is entirely a non-smoking site.

CONCLUSION

Industrial Generators appreciate this opportunity to provide these Comments on these important RCRA regulations. We also appreciate and support the several proposed regulations that would provide needed flexibility in the generator standards. EPA, however, has also used this rulemaking to propose new burdensome and unnecessary requirements on generators. Given that generators are not staffed like TSDFs are on RCRA matters, and usually manage much less hazardous waste in much less complicated ways, we urge EPA to consider the cumulative effect of the many new requirements it proposes for generators, and to scale back those requirements to only those that are most necessary to protect human health and the environment.

For questions or additional information, please contact Brendan Mascarenhas at the American Chemistry Council, (202) 249-6423 and brendan_mascarenhas@americanchemistry.com.