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ENVIRONMENTAL, HEALTH & SAFETY NEWSLETTER

May 2017

New Administration and EH&S

Hazardous Materials Storage

Stacking Safety

Captain Obvious

Our Take On It: Matejek vs. Watson

Water Regulations & Horse Racetracks

Hazardous Waste Episodic Requirements

Work Safe. Live Safe. Stay Safe.

What Does the New Administration Mean for H&S in Your Workplace?

Introduction

One thing we have learned from the new administration is that the notions of predictability and business as usual in our nation's capital are out the window. This cannot be overstated when it comes to the Occupational Safety and Health Administration (OSHA) in the new administration, starting with the fact that the U.S. Secretary of Labor and the Assistant Secretary for OSHA positions remain vacant.

Recent History

During the Obama administration, OSHA moved from a more cooperative balance of compliance assistance and enforcement, seen under the Bush 43-era years, to an enforcement-heavy approach. This approach diminished OSHA's Voluntary Protection Program (VPP) as a program too easy to get into and stay in, even with a history of violations, and ushered in a policy of public shaming through the use of press releases and the passage of the electronic reporting requirements set to go into effect with the first round of reporting due by July 1, 2017.

The number of OSHA inspections of U.S. workplaces has been decreasing since 2012, which also coincides with a reduction in the number of violations cited during these inspections. The reduction has been attributed to government shutdowns and budgetary sequester measures instituted by the 112th Congress in 2011. However, OSHA inspectors shifted focus of the audits to more complex issues (e.g., process safety management and combustible dust) as well as an increase of "repeat violations" cited, especially since OSHA changed its interpretation of a "workplace" as it applied to corporations with multiple locations. The emphasis on repeat violations was thought to be another way that OSHA was attempting to shape or change behavior through increasing the level of enforcement.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (i.e., the Inflation Adjustment Act [IAA]) required OSHA to increase civil penalties to closely track with the Consumer Price Index (CPI). At the time of passage of the Act, OSHA's civil penalties were locked at 1990 levels and the implementation of the Act increased civil penalties by almost 80 percent. The Act also required that OSHA increase civil penalties every year to match the CPI. Civil penalties were increased for 2017. Here is a quick look at the civil penalty changes:

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Type of Violation	Current Maximum Penalty (Prior to the IAA)	New Maximum Penalty (Effective 8/16/2016)	2017 Amounts Adjusted for Inflation
Serious Other-Than-Serious Posting Requirements	$7,000 per violation	$12,471 per violation	$12,675 per violation
Failure to Abate	$7,000 per day beyond the abatement date	$12,471 per day beyond the abatement date	$12,675 per day beyond the abatement date
Willful or Repeated	$70,000 per violation	$124,709 per violation	$126,749 per violation

Due to the enforcement-heavy approach of the previous administration and the increase in maximum penalties, businesses saw record high fines in the last two to three years of the Obama Department of Labor. Additionally, already in-place National Emphasis Programs were extended and new ones were implemented at a rate not seen in previous administrations. It is thought that all these measures were implemented to increase awareness of enforcement and to create a more punitive relationship between OSHA and employers.

OSHA also used press releases and their website to increase the public awareness of their enforcement efforts. What was commonly referred to as public shaming of violators included press releases of information before citations and fines were finalized and posted to the OSHA webpage. Additionally, it is thought that the new requirements to electronically file injury and illness reports furthers the effort to publicly shame violators. The changes to the injury and illness recordkeeping and reporting rule included anti-retaliation and post-incident drug testing prohibitions related to employee injury reporting. Some of these provisions may change under the new administration.

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Looking Forward

The new administration will likely have a tendency to advocate for businesses and business owners and have less of a "worker first" mentality. This will likely be seen in a roll back to the Bush 43-era approach of more cooperative measures related to enforcement and compliance assistance.

There will likely be less emphasis on enforcement activities, a resurgence of the VPP, and potential changes to the injury and illness recordkeeping and reporting rule.

While many OSHA standards will remain unchanged, including the fixed amounts for civil penalties, we are likely to see a reduction in enforcement actions, and when violations are identified we can likely expect citations to be less severe and potentially offer ways other than civil penalties to comply (e.g., compliance assistance). However, there may be changes to the new injury and illness recordkeeping and reporting rule regarding posting of the information, anti-retaliation measures, and post-incident drug testing.

It is unlikely that the requirement to electronically file injury and illness information will be lifted. With the emphasis the new administration has placed on deregulation and a business-friendly climate, some of the provisions of the new rule may be changed, such as:

- public posting of the injury and illness information may not be automatic
- certain parts, or all, of the anti-retaliation provisions may be removed or simply not enforced
- restrictions on post-incident drug testing may be removed or not enforced.

OSHA can make these changes in several different ways. They can choose the formal rulemaking route, which is resource heavy and takes time. OSHA may choose to change or implement new interpretation letters that can effect enforcement of the rules, or they can implement budget riders which can curb enforcement by reducing resources to conduct audits.

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At this point, there is little we can say about OSHA under the new administration with certainty. However, we can be certain that the health and safety of workers is still of the utmost importance to our clients, and that EHS Support can assist with all matters related to H&S compliance, no matter what the focus of OSHA under the new administration may be.

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Hazardous Materials: Proper & Safe Storage Practices

OSHA requires employers to provide a workplace as free as possible from recognized hazards, including chemical hazards. OSHA regulates many hazardous materials found in facilities.

The most comprehensive regulation is the hazard communication standard (29 CFR 1910.1200) that says employers must communicate the hazards of chemicals used in workplaces through training, labeling, and signage.

Employees have a duty to identify hazardous materials in their facilities and maintain information on the type of hazards these materials present. Manufacturers or suppliers of chemicals must provide managers with information on chemical hazards their products present by generating safety data sheets (SDSs) for all hazardous products.

Hazardous Material Storage

Proper storage of hazardous materials is the next step in managing them correctly. Common problems of hazardous-material storage include using inappropriate or leaking containers, storing incompatible chemicals together, or using inappropriate or unsecured storage products. The following list outlines the proper storage of hazardous materials.

- Always ensure containers have proper labels and are not leaking or spilling their contents in storage areas. It also is essential that storage areas are designed for the hazards present.
- Store chemicals in a closeable cabinet or on a sturdy shelf with a front-edge lip to prevent accidents and chemical spills.
- Ensure all storage areas have adequate ventilation and doors with locks.
- Store corrosive chemicals in a dedicated acid cabinet in a secondary storage container.
- Cabinets should be made of coated steel or multi-layered plywood, which resists corrosive materials.
- Store nitric acid alone, unless the cabinet provides a separate compartment for nitric-acid storage.

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Hazardous Materials: Proper & Safe Storage Practices

- Store water-sensitive chemicals in a watertight cabinet in a cool and dry location, segregated from other chemicals.
- Avoid placing heavy materials, liquid chemicals, and large containers on high shelves or on top of cabinets; chemicals should not sit on the floor or be placed on shelves above eye level.
- Never store chemicals alongside food and drinks or in personal staff refrigerators, even temporarily. Refrigerators should feature proper signage indicating if they are dedicated for chemical storage.

Compressed Gas Cylinder Storage

Mishandled compressed gas cylinders can rupture violently and release hazardous contents or become dangerous projectiles. The following list outlines the proper storage of compressed gas cylinders.

- Always label cylinders properly, including the name of the gas and any related hazards, such as flammability or reactivity.
- Cylinders should be stored in compatible groups. The following should NOT be stored together:
  - flammables and oxidizers
  - corrosives and flammables
  - full cylinders and empties (Note: Empty cylinders should be clearly marked and stored as carefully as those that are full because they might contain residual gas. All cylinders must be segregated from corrosive vapors.)
- All compressed-gas cylinders must be stored in a secured, upright position. A clamp and belt or chain securing the cylinder to a wall about two-thirds of the cylinder's height is generally suitable for this purpose. Consider securing each cylinder individually, since using one restraint strap around several cylinders is often not effective. When moving cylinders, use a cylinder cart and secure cylinders with a chain.

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Hazardous Materials: Proper & Safe Storage Practices

- During storage, keep oxygen cylinders at least 20 feet from flammable-gas cylinders or combustible materials. If this is not possible, separate them with a non-combustible barrier at least 5-feet high with a fire rating of at least 30 minutes. Valves must be closed, with protective caps in place when the cylinder is empty or not in use.
- Finally, store cylinders in well-ventilated areas designated and marked for cylinders only.

Hazardous Waste

Hazardous waste has some additional considerations based on the type and quantity. A solid waste is going to be hazardous because it is on a list (F-, K-, U-, or P-listed) or it meets any of the four characteristics:

- Ignitable
- Corrosive
- Reactive
- Toxic.

Whether required or as a best management practice, hazardous waste should be properly labeled, stored in a compatible container, segregated to prevent incompatible mixtures (e.g., segregation can be by hazard class), and stored in a manner to prevent release of the contents (i.e., containers in good condition and can be closed). Improper labeling and storage have the potential risks such as fire or explosion from reactivity of incompatible wastes, sudden release of pressure, health hazards from exposure to corrosive or toxic wastes, and environmental risks from spills and releases of hazardous waste. Understand storage limits and container storage area requirements and capacity to further minimize the potential risks, and ensure personnel are properly trained to handle the particular waste(s) generated by facility operations whether it be from a laboratory or industrial process.

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Stacking Safety

When we think of the safety issues associated with warehouses, many of us tend to think about the hazards involved in using equipment like forklifts, or the dangers of lifting heavy materials. While these issues do pose significant threats, the way materials are stored in the warehouse can also impact everyone's safety.

If stacked incorrectly, products, raw materials, and other supplies can fall and cause injuries like cuts and bruises, or even more serious injuries such as crushing and pinning. Standards for storing materials should be followed to avoid these accidents.

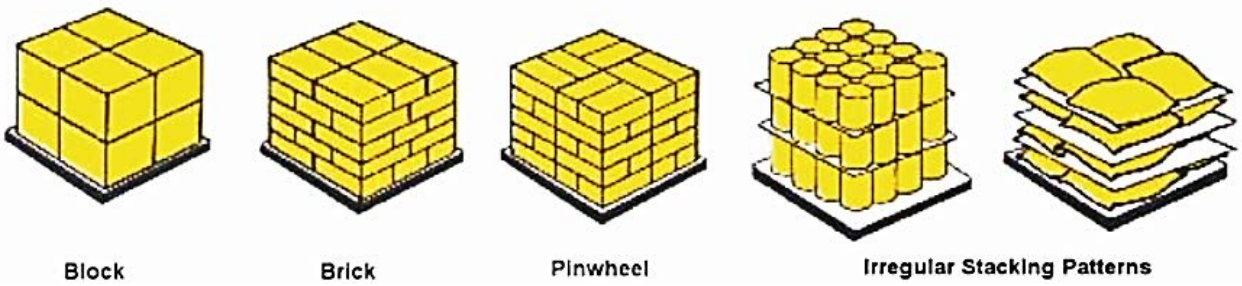
Prevent Stacking and Storage Accidents

OSHA requires that stored materials not create hazards; in most cases, following simple instructions can be enough to avoid a problem. The following discusses how to prevent a stack of materials from collapsing.

Collapsing Loads

One of the most common accidents related to storage is when a stack of materials collapses. When materials are stacked too high or in an unstable arrangement, removing an item from the stack or bumping the stack can cause the rest of the materials to fall. If heavy objects are involved, this can pose a real threat to employees.

Using an appropriate stacking method is one of the best ways to keep a stack from collapsing. Try one of these options:



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- **Block Stacking** – Stack square items in a cube, making sure to secure them with some kind of strapping like wire or plastic shrink wrap.
- **Brick Stacking** – To ensure even more security, turn each level of a stack 90 degrees. This helps hold the items in place if a stack is bumped.
- **Pinwheel Stacking** – For even more protection than the brick pattern, turn each quadrant—not just each level—of items 90 degrees. Patterns like this help "lock" everything in place.
- **Irregular Stacking** – When dealing with irregularly shaped items, try adding sheets of plywood between each layer for added stability. We'll discuss irregular items more in a minute.

In addition to using secure stacking methods, you'll need to consider the height and weight of the material being stacked to prevent a collapse. Heavy materials should generally be stacked close to the ground (if stacked on shelves) and not too high. Bricks, for example, should only be stacked seven feet high, and if the pile is higher than four feet, the top of the pile should be tapered (two inches back for every foot of height above four feet).

You should also take into consideration the type of material you're stacking because some materials have specific requirements. Lumber, for example, should have all nails removed before stacking and can't be stacked greater than 16 feet high (if workers will be handling it manually). Cylindrical materials like poles or pipes should be blocked on the sides so they don't roll off the pile. Bagged materials must use tapered stacking (a bit like a pyramid, with the layers getting narrower the higher up they are) and be placed in interlocking rows. Barrels and drums should be stacked symmetrically and if stored on their sides, must be properly blocked to prevent rolling.

Lastly, when removing materials from a stack, always take them from the top of the stack first.

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Why is it that safety professionals are getting heckled when we provide reminders on basic safety information and then go into a facility to conduct a mock-OSHA audit and find the same type of potential hazards or non-compliance items over and over again? Each month we feature a "Captain Obvious" photo to share simple safety reminders that are found on jobsites every day.

CORRECTIVE ACTIONS

Whether required or as a best management practice, hazardous waste should be properly labeled, stored in a compatible container, segregated to prevent incompatible mixtures (e.g., segregation can be by hazard class), and stored in a manner to prevent release of the contents (i.e., containers are in good condition and can be closed).

FINDING

Improper Hazardous Waste Storage

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Our Take on New Jersey's Appellate Court Decision – Matejek vs. Watson

A recent NJ Court of Appeals decision may have industrial facilities at odds with their neighbors soon. The Greg Matejek v. Guy Watson decision upheld a ruling that allows a property owner to compel neighboring facilities to contribute to environmental investigations without any evidence to suggest the innocent party contributed to the pollution event.

The decision began in 2006 when oil was discovered on a creek surface in Hillsborough, New Jersey. The New Jersey Department of Environmental Protection (NJDEP) removed one underground storage tank from each of five condominiums in proximity to the stream. NJDEP returned a short time later to ensure that the sheen was gone, but left the case file open. Seven years later in 2013, the plaintiff sought to remove the environmental uncertainty from his property title in order to sell the property. He filed suit against the four other condominium owners to participate equally in the investigation, and, if necessary, the remediation of the property. While three owners relented, the defendant did not. Both the trial judge and the appellate court sided with the plaintiff, citing 'jointly and severally liable' clauses of the New Jersey Spill Compensation and Control Act. The judges imparted equitable remedy by stating that the plaintiff has no other options but to solely bear the expense of the investigation/remediation, and that the court needed to provide a remedy that fairly and justly alleviated the unequitable burden of such a narrow interpretation of the Act. Therefore, all neighbors were required to financially participate in the investigation.

This decision could spur pollution lawsuits, encouraging property owners to pursue shared costs of investigation/remediation with prior owners and neighbors. It is not far-reaching to think that a corner gas station or dry cleaner detecting product in the site groundwater could seek contributions from a nearby competitor without first compiling the proper evidence.

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The ruling should give property owners pause and encourage them to consider potential changes as a result of this ruling. Insurance companies will evaluate neighbors (or entire watersheds) more closely when underwriting a policy, with the potential for additional insurance claims (and ultimately) higher premiums. Commercial/industrial entities should be aware of their neighbors. Could their bad housekeeping or under-protected container storage areas pose a potential risk to you should a release be discovered?

The ruling creates a potential quagmire for neighbors of impacted sites, speeding up lawsuits before concrete evidence is gathered by just believing that others are responsible. On the flip side, after the investigation is complete, there is the possibility of additional lawsuits to recover funds from unjustly demanded contributions (in cases where the third party proves it did not contribute). In the case of inconclusive investigation results, does that default to shared cost?

As a New Jersey company/resident, how can you protect yourself?

- Be vigilant with tracking, management, record keeping, and disposal of all hazardous/toxic materials. Use reputable suppliers and disposal firms.
- Know your neighbors and their operations.
- Review your insurance policies – are you protected for third-party demands? If not, call your broker and get covered now.

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Recent Penalty Highlights Regulation of Water Discharges from Horse Racetracks

Regulations for animal feeding operations (AFOs) were developed in 1976 to ensure manure, litter, and other process wastewaters do not impair water quality. These regulations apply to AFOs where animals are stabled or confined, and fed or maintained for a total of 45 days or more over a 12-month period, including horse racetracks. There are small, medium, and large operations with varying size thresholds.

What is the CAFO Rule?

The USEPA announced the 2003 Concentrated Animal Feeding Operation (CAFO) Rule on February 12, 2003 (68 FR 7175) (with subsequent revisions in 2008 and 2012) to expand the number of operations covered by the original CAFO regulations in 1976 and to require all CAFOs to apply for a National Pollutant Discharge Elimination System (NPDES) permit. In addition to the permit, CAFOs must develop and implement a nutrient management plan.

Why is compliance with CAFO regulations so important?

Recently, CAFOs, particularly horse racetracks, have been in the enforcement spotlight. On September 30, 2016, the United States Attorney for the Eastern District of New York and the USEPA Region Administrator for Region 2, filed a complaint against The New York Racing Association, Inc. (NYRA) and lodged a consent decree to resolve the allegations in the complaint.

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Recent Penalty Highlights Regulation of Water Discharges from Horse Racetracks (Cont.)

The NYRA operates the Aqueduct Racetrack in Ozone Park, New York and the State of New York owns the facility. The Aqueduct Racetrack houses up to 450 horses on-site during horse race season (October to April) each year. This operation meets the definition of a medium AFO under 40 Code of Federal Regulation (CFR) 122.23(b)(6). The NYRA violated the Clean Water Act (CWA), Section 301, by discharging the process wastewater from the Aqueduct Racetrack in violation of their New York State Department of Environmental Conservation (NYSDEC) State Pollutant Discharge Elimination System (SPDES) general permit for CAFOs. NYRA was assessed a civil penalty of $150,000.

Is my horse racetrack facility subject to CAFO regulation?

To avoid penalties such as the one levied against the NYRA, determine if the facility is subject to the CAFO regulations in 40 CFR Part 412, Subpart A (Horses and Sheep). An operation should first evaluate whether they meet the definition of an Animal Feeding Operation (AFO). An AFO is defined in 40 CFR 122.23(b)(1) as:

Animal feeding operation ("AFO") means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
- (ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. [Per the NPDES Permit Writers' Manual for CAFOs, if a facility maintains animals in an area without vegetation, such as dirt lots with incidental vegetative growth, the facility meets the second part of the AFO definition.]

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Recent Penalty Highlights Regulation of Water Discharges from Horse Racetracks (Cont.)

The USEPA webpage entitled "National Enforcement Initiative: **Preventing Animal** Waste from Contaminating Surface and Ground Water" defines AFOs as: "Animals are kept and raised in confined situations for a total of 45 days or more in any 12-month period and feed is brought to the animals rather than the animals grazing or otherwise feeding in pastures, fields, or on range land."

How do CAFO regulations apply to horse racetracks?

If a horse racetrack facility meets the definition of an AFO and meets the size threshold of 500 or more horses on-site, the facility is considered a large CAFO per (40 CFR 122.23(b)(4)). As a large CAFO, the facility is regulated under the NPDES or the state-approved NPDES program and must apply for an NPDES permit. Once the facility applies for and obtains coverage under an NDPES permit, the facility must comply with all the terms and conditions of the permit, including the development and implementation of a manure nutrient management system.

A medium AFO is a CAFO if the facility confines between 150 to 499 horses, and either has a manmade ditch or pipe that carries manure or wastewater to surface water, or the horses come into contact with surface water that passes through the area where they are confined. If an operation is found to be a significant contributor of pollutants, the permitting authority may designate a medium-sized facility as a CAFO. As in the case history presented earlier, the medium AFO Aqueduct Racetrack was designated by the NYSDEC as a CAFO.

A small AFO is a CAFO if the facility confines fewer than 150 horses and has been designated as a CAFO by the permitting authority as a significant contributor of pollutants.

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How do I get more information about CAFO requirements?

USEPA has prepared a comprehensive guidance manual on CAFOs entitled "NPDES Permit Writers' Manual for Concentrated Animal Feeding Operations" (February 2012). The manual discusses AFOs and CAFOs, permitting strategies, elements of an NPDES permit for a CAFO, nutrient management planning, and land application of manure.

If your horse racetrack has not been properly evaluated for regulatory applicability to the CAFO regulations in 40 CFR 412, Subpart A, please contact **Mike Arozarena** at (513) 773-5364 or mike.arozarena@ehs-support.com or **Amy Bauer** at (251) 533-6949 or amy.bauer@ehs-support.com. We will be able to determine your regulatory status and, if needed, provide technical assistance with permitting and manure nutrient management planning.

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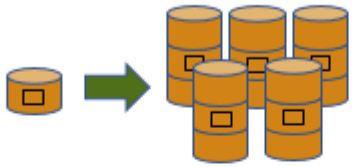
Navigating Hazardous Waste Episodic Generation Requirements

A generator of hazardous waste is classified on the amount (volume) and type of hazardous waste generated in a calendar month. Although it varies by state, under the Resource Conservation and Recovery Act (RCRA), there are three classes of generators: large quantity generator (LQG), small quantity generator (SQG), and conditionally exempt small quality generator (CESQG). To determine your generator category, count all waste generated in a calendar month.

Conditionally Exempt Small Quantity Generator (CESQG)

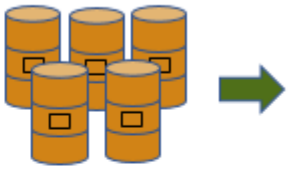
½ drum
or less than:
- 27 gallons
- 220 pounds
- 100 kilogram

Small Quantity Generator (SQG)



½ drum to 5 drums
or between:
- 27-275 gallons
- 220-2200 pounds
- 100-1000 kilograms

Large Quantity Generator (LQG)



more than 5 drums
or greater than:
- 275 gallons
- 2200 pounds
- 1000 kilograms

Key:

= 55 gallons ~ 440 pounds ~ 200 kilograms

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Navigating Hazardous Waste Episodic Generation Requirements (Cont.)

What is an episodic generator?

Sometimes a generator (or non-generator) will generate an unusually large amount of hazardous waste in a calendar month. The March 24, 1986 Federal Register (51 FR 10153 - 10154) clarified the regulations applicable to generators that generate differing amounts of waste from time to time, referring to these generators as "Episodic Generators." The two basic concepts are:

"… a generator may be subjected to different standards at different times, depending upon his [or her] generation rate in a given calendar month."

Wastes generated at different times may be subject to different requirements while in storage on the site at the same time.

There are some wastes that do not count when determining generator status; however, unless exempt, all hazardous waste generated (including wastes generated from activities such as remediation/spill, underground storage tank removal, or annual plant shutdown) could trigger a different hazardous waste generator category. An episodic generator is responsible for all applicable requirements of the generator category for all wastes generated during that calendar month. For example, if environmental media (e.g., soil) containing a listed waste is removed from the ground, it becomes a hazardous waste that must now be managed by the generator.

The two basic concepts for episodic generators...

"... a generator may be subjected to different standards at different times, depending upon his [or her] generation rate in a given calendar month."

Wastes generated at different times may be subject to different requirements while in storage on the site at the same time.

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Navigating Hazardous Waste Episodic Generation Requirements (Cont.)

If it is from a facility that typically does not generate hazardous waste, and 2,500 pounds of that investigation-derived contaminated media was generated in a calendar month, the generator category for that month is LQG. In addition to having to obtain an EPA ID number for SQGs and LQGs, the possible impacts of episodic events include:

- Compliance with hazardous waste requirements
- Generator closure requirements (LQGs and SQGs only)
- Potential Superfund liability for wastes shipped off-site
- Property transfer requirements (in applicable states).

The key to episodic generation is advanced planning; this will not change based on the final Hazardous Waste Generator Improvements Rule (see the following section).

Episodic Generation Under the Final Hazardous Waste Generator Improvements Rule

In our previous newsletter, we reported that on October 28, 2016, the U.S. Environmental Protection Agency (EPA) Administrator signed the final Hazardous Waste Generator Improvements Rule, which includes over 60 changes to RCRA. The final Hazardous Waste Generator Improvements Rule was published in the *Federal Register* (FR) on November 28, 2016, and became effective on May 30, 2017 in Iowa and Alaska. In the 48 authorized states, the new requirements do not take effect until the state adopts equivalent state requirements and even then, only those federal regulations that are more stringent than the authorized state regulations. The new episodic generator requirements are outlined in 40 CFR Part 262 subpart L. In some instances, certain state programs may be more stringent than the federal program. It will be critical to evaluate not only how this federal rule could impact your hazardous waste management, but also to consider how your state and local waste authorities implement these revised requirements.

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Notably, the final rule identifies changes specific to CESQGs (which will be referred to as Very Small Quantity Generators - VSQGs) and provides for an exemption for episodic generators of hazardous waste for VSQGs and SQGs. Historically, facilities were obligated to achieve compliance based on the quantity of hazardous waste generated in a calendar month – even if that meant that a generator's status changed during a month due to a non-routine event (e.g., equipment clean-out) known as an episodic generation. The increased hazardous waste volume triggered more stringent generator requirements, which can lead to a risk of non-compliance. Under the final rule, a VSQG or SQG may exceed its generator category limits because of an episodic event, but still maintain its existing generator category.

VSQG Episodic Generator Requirements

As outlined in 40 CFR Part 262 subpart L, for VSQGs, the following specified conditions are met:

1. Episodic events are limited to one per calendar year with the ability to petition for a second event if first event is planned. The petition for the second event must be for an unplanned event or vice versa.
2. The generator must notify EPA at least 30 calendar days before initiating a planned episodic event or within 72 hours after an unplanned episodic event.
3. Conclude the episodic event within 60 days (includes all the generation of the hazardous waste, as well as getting it of-site).
4. Obtain an EPA ID number.
5. Use hazardous waste manifest and transporter to send episodic waste to RCRA-designated facility (treatment, storage, and disposal facility [TSDF] or recycler).
6. Manage the episodic hazardous waste in a manner that minimizes the possibility of an accident or release.
7. Label episodic waste containers.
8. Identify an emergency coordinator.
9. Maintain records associated with the episodic event.

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SQGs need only comply with existing SQG regulations and maintain records associated with the episodic event.

According to EPA, if an SQG has an episodic event (and operates under the Subpart L provisions), the generator will not be required to submit a biennial report because of the episodic event. Something that is important to note for clean outs or investigation/remediation activity, the start of the episodic event is not when you receive your laboratory analytical results (to confirm if characteristically hazardous), but rather when you generate the waste (e.g., when you remove the soil from the ground). Therefore, timing of laboratory reports is crucial.

SQGs need only comply with existing SQG regulations and maintain records associated with the episodic event.

Episodic LQG Closure Requirements

One challenge that episodic generators will continue to face is the closure requirements for LQG hazardous waste accumulation units, including 90-day hazardous waste container storage areas. Episodic generators are not exempt from this requirement regardless of the type of facility (i.e., industrial vs. remediation site only). For purposes of this discussion, closure is when an LQG stops using the unit and cleans it up. Closing a unit includes removing all waste, disposing of it properly, and decontaminating the area.

As an LQG, you are not required to close your hazardous waste accumulation/treatment units until you close your entire facility, and you are exempted from complying with most of the closure rules particularly providing a closure plan, having a closure cost estimate, and having financial assurance for closure. However, all LQGs must comply with closure performance standards and you must adhere to the following.

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- Close the facility in a manner that minimizes the need for further maintenance
- Eliminate the possibility that hazardous waste could be released in the future
- Dispose or decontaminate contaminated equipment, structures, and soil properly.

The type of waste accumulation units and areas you maintain determine the steps you must take to satisfy the rule requirements. For instance, there are different requirements for containers and tanks stored on impermeable and potentially permeable surfaces, as well as for those tanks or containers that had a leak, spill, or release to a permeable or impermeable surface.

Under the Hazardous Waste Generator Improvements Rule, LQGs will have a choice for when they close a hazardous waste accumulation unit and must comply with one of the following:

- Place a notice in the operating record within 30 days after closure identifying the location of the unit within the facility, but not comply with the formal closure performance standards of new § 262.17(a)(8)(iii–iv) for container areas, tanks, drip pads, and containment buildings until the facility closes; or
- Comply with the formal closure performance standards of new § 262.17(a)(8)(iii–iv) for the unit, and notify EPA or the state using Form 8700-12 within 90 days after closing the unit.

If the waste accumulation unit is subsequently reopened, the generator may remove the notice from the operating record.

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The closure requirements do not apply to satellite accumulation areas. A generator may accumulate up to 55 gallons of each waste stream from different points of generation at each accumulation area. Nothing in the rule specifies that satellite containers must be located a certain distance from each other. If the waste streams are from different points of generation, they can be considered separate satellite accumulation areas. Generators must ensure that the waste is being accumulated at or near the point where the waste is first generated, and that the waste is under control of the operator of the process generating that waste. There are many sources of federal and state guidance and interpretation on satellite accumulations areas.

Tips and Takeaways

- Hazardous Waste Generator Improvements Rule promulgated under RCRA authority becomes effective in Alaska and Iowa on May 30, 2017, with new episodic generator requirements as outlined in 40 CFR Part 262 subpart L. In the 48 authorized states, the new requirements do not take effect until the state adopts equivalent state requirements and even then, only those federal regulations that are more stringent than the authorized state regulations.
- Think about waste management issues when planning events and prepare any plans and documents in advance of anticipated generation event. This should include how and where you will store hazardous waste (consider LQG closure performance standards and options for satellite accumulation areas).
- Minimize hazardous waste generation when possible (e.g., when removing soil from investigation or remediation, place known impacted material in separate containers from presumed non-impacted material).
- Spread out waste generation over time.

EHS Support will continue to monitor implementation of the Hazardous Waste Generator Improvements Rule. We can help you track adoption of this rule in your state. For more information, contact **Amy Bauer** at (251) 533-6949 or amy.bauer@ehs-support.com.

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