



White Paper May 2006

On May 4, new requirements that will reduce paperwork burden on agencies and facilities regulated by the RCRA hazardous waste program took effect.

Resource Conservation and Recovery Act Burden Reduction Initiative

Introduction

On April 4, 2006, EPA published the “Resource Conservation and Recovery Act (RCRA) Burden Reduction Initiative” final rule. The rule changed several RCRA regulatory requirements to reduce the paperwork burden on regulatory agencies and on facilities regulated by the RCRA hazardous waste program. Before publishing the rule, EPA determined that these changes will not affect human health and the environment. The final rule took effect on May 4, 2006. It is important to note, however, that the new requirements do not become effective in RCRA-authorized states until specific activities occur to adopt and authorize the new requirements in the respective states.

Changes at a Glance

The RCRA Burden Reduction Initiative final rule affects facilities regulated by RCRA under 40 CFR 260 through 273. The Principal Center has carefully reviewed the final rule to determine what has changed and has summarized the changes in this white paper.

Record Retention

RCRA previously required permitted and interim-status facilities to retain all records for the lifetime of the facility (although this did not apply to generators). In the final rule, EPA changed the retention times for several records:

- The retention time for certain records kept in a treatment, storage, and disposal facility’s (TSDF) overall operating record *decreased* from the lifetime of the facility to three years. This change applies to selected records under 40 CFR 264.73 and 40 CFR 265.73 including waste analyses; certain monitoring, testing, and analytical data; waste determinations; selected certifications; and notifications. These changes do not apply to hazardous waste generators, but to permitted or interim status TSDFs.
- The retention time for certain records kept in an interim-status facility’s operating record increased. Groundwater quality assessment plans and reports must now be kept in the facility’s operating record until the facility is closed. These facilities, however, are no longer required to submit these reports to EPA. These changes do not apply to hazardous waste generators, but to permitted or interim status TSDFs.
- The retention time for information on the operation of incinerators, boilers, and industrial furnaces decreased from the lifetime of the facility to five years. This change, which maintains consistency with the five-year retention time mandated under the Clean Air Act, applies to RCRA records such as certification of compliance and performance tests for continuous emissions monitors. These changes do not apply to hazardous waste generators, but to permitted or interim status TSDFs.

EPA changed the requirements of an "independent, qualified, registered, professional engineer" to a "qualified professional engineer." Facilities can now use in-house engineers to certify certain RCRA reports.

EPA is maintaining the requirement that the retention period for any records can be extended automatically during the course of any unresolved enforcement action involving the facility or when specifically requested by EPA. The agency is also maintaining the retention periods for records that include the following information:

- Description and quantity of each hazardous waste received and what was done with it
- Location of each hazardous waste
- Closure estimates
- Quantities of waste placed in land disposal units under an extension to the effective date of any land disposal restriction

Regulators believe that this information must be retained to ensure protection of human health and the environment through the life of a facility until it closes. These changes do not apply to hazardous waste generators, but to permitted or interim status TSDFs.

Professional Engineer Certification Requirements

The RCRA regulations contain various requirements for generators and for interim-status and fully permitted TSDFs to obtain the services of an independent, qualified, registered, professional engineer. The engineer's task is to certify the effectiveness of the design and operation of various hazardous waste management units. EPA changed this requirement by removing the terms "independent" and "registered." Regulators determined that the terms "registered" and "professional" are redundant. The agency removed "independent" using the reasoning that the programs established by the state licensing boards enable a professional engineer to deliver fair technical reviews regardless of whether he or she is independent. These changes mean that facilities can now use in-house engineers to make certifications on certain RCRA reports.

For hazardous waste generators, this change will apply only to the requirements for certifying tanks that store hazardous wastes.

EPA allows facilities to eliminate redundant RCRA and OSHA training requirements.

Integrated Contingency Plans

EPA amended Sections 264.52(b) and 265.52(b) to give owners and operators of TSDFs (along with hazardous waste generators who are required to have a contingency plan) the option of developing one contingency plan for their particular facility. EPA recommends that the plan be based on its *Integrated Contingency Plan Guidance*, which includes information on consolidating the multiple contingency plans that facilities must prepare to comply with various regulatory requirements. Maintaining a single plan per facility will eliminate confusion for facility managers who must decide which of the contingency plans is applicable to a particular emergency. EPA has also clarified that when modifications are made to non-RCRA provisions in

an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

EPA is allowing the land disposal treatment determination to be made concurrently with the hazardous waste determination.

Emergency Response Training

EPA and the Occupational Safety and Health Administration (OSHA) have both promulgated regulations addressing worker activities and training at hazardous waste management facilities. EPA's hazardous waste regulations focus on facility operations and worker training; OSHA's requirements focus on worker safety. To ensure that all facilities are covered and that there are no gaps in emergency response training requirements, EPA is allowing facilities to eliminate redundant training requirements under RCRA and OSHA requirements. For example, if a facility meets all of the RCRA emergency response training requirements because it administers an OSHA training course, EPA will consider the facility to be RCRA-compliant. Facilities that are not subject to OSHA training requirements must still comply with the RCRA training requirements. These changes apply to hazardous waste generators who are required to provide this response training.

EPA recommends that hazardous-waste generators and TSDF owners and operators work with their appropriate permitting and enforcement authority to ensure that their approach to developing an emergency response training program complies with the requirements of Sections 264.16 and 265.16.

Requirements Under RCRA's Land Disposal Restrictions

Section 268.7(a)(1), which requires generators to determine if hazardous waste must be treated before land disposal, was amended. EPA is allowing this determination to be made concurrently with the determination of whether a waste is hazardous.

In this section, EPA also clarified that if a generator does not want to determine whether the waste must be treated, the facility can be assumed to be subject to the full array of land disposal restriction (LDR) requirements. The generator must then send the waste to a RCRA-permitted hazardous waste treatment facility, which must determine whether it has met the LDR treatment standards. TSDFs are already required to make this determination as part of the general waste analysis requirements of 40 CFR 264.13.

EPA also amended the similar requirement for generators of characteristic hazardous wastes under the LDR requirements. This amendment, which is intended to parallel the changes to Section 268.7(a)(1) discussed previously, allows facilities to conduct the two generator waste analyses concurrently. EPA has also deleted 17 RCRA

requirements for permitted TSDFs and interim-status TSDFs because they are no longer applicable or they have expired.

Recordkeeping and Reporting Requirements

EPA eliminated several recordkeeping and reporting requirements thought to result in duplicative information, as outlined in the subsections that follow.

EPA eliminated three recordkeeping and reporting requirements: notification of compliance after a release; notification of intent to burn F020 through F027 wastes; and notification if the facility employs or discontinues use of the alternative valve standard.

Notification of compliance after a release. EPA eliminated the requirements in Sections 264.56(i) and 265.56(i), which direct facility owners or operators (including hazardous waste generators) to notify their regional EPA office and appropriate state and local authorities when a facility regains compliance after an emergency that necessitated implementation of the contingency plan. Agency representatives decided that the report specifying the details of the incident (which is submitted to these regulatory agencies 15 days after the emergency) is sufficient.

Notification of the intent to burn F020, F021, F022, F023, F026, and F027 wastes. EPA eliminated this notification because these facilities are already permitted to burn these wastes and existing regulatory standards govern how the waste is burned. This change does not apply to hazardous waste generators, but to permitted or interim status TSDFs.

Notification if the facility employs or discontinues the use of the alternative valve standard. EPA representatives decided that these notifications are unnecessary because sufficient information and data will be available to the regulatory authority to allow it to monitor compliance with an alternative standard.

Notification if the facility is using alternative valve work practices. The alternative work practices described in the regulations are straightforward, and the results of the leak detection periods are maintained in the facility files as required under the recordkeeping requirements found in Section 264.1064. As a result, EPA eliminated this reporting requirement.

Decreased Inspection Frequency for Hazardous Waste Management Units

RCRA requires generators and TSDFs to conduct self-inspections of their facilities and specific equipment or units to ensure compliance with the regulations. EPA has reduced the frequency of several self-inspections, recognizing that most facilities can conduct formal inspections less often without causing harm to human health and the environment. Some of the reductions in self-inspection frequencies follow:

EPA reduced document requirements for obtaining a variance from classification as a solid waste and treatability study reports for testing facilities.

NEPTP members may apply for reduced inspections of certain hazardous waste units and areas.

Weekly inspections, instead of daily inspections, for certain hazardous waste tank systems at permitted and interim-status facilities and at large quantity generator (LQG) sites. This amendment reduces inspections for (1) aboveground portions of the tank system, if any, to detect corrosion or waste releases; and (2) the construction materials and the area immediately surrounding the externally accessible portion of the tank system (including the secondary containment system) to detect erosion or signs of hazardous waste releases. Reduced inspections will be allowed when either of two conditions are met: (1) tank owners and operators employ leak detection equipment; or (2) in the absence of leak detection equipment, tank owners and operators employ established workplace practices that ensure the prompt identification and remediation of any leaks or spills. Owners and operators choosing one of these options to reduce inspection frequencies should document the option selected in their operating records.

Weekly instead of daily inspections for small quantity generator (SQG) hazardous waste tank systems with secondary containment. Under the current regulations, SQGs must conduct both daily and weekly inspections of tanks used to accumulate hazardous wastes. This amendment allows inspection frequencies to be reduced if these tank systems are equipped with secondary containment, which can take the form of either leak detection equipment or established workplace practices that ensure prompt detection of releases. Owners and operators choosing one of these options to reduce inspection frequencies should document the option selected in their operating records.

Members of the National Environmental Performance Track Program may apply for an adjustment to their inspection frequencies for certain hazardous waste units and areas. On a case-by-case basis, Performance Track member facilities can further reduce the frequency of self-inspections of tank systems, containers, containment buildings, and areas subject to spills to at least once each month by submitting an approval form. For those members that are also permitted TSDFs, the application must be in the form of a Class 1 permit modification with prior approval.

Submittal of Documents

EPA streamlined the procedure for obtaining a variance from classification as a solid waste. Previously, the agency listed eight criteria to be used in evaluating the validity of the request for a variance. One of the eight criteria required demonstrating the prevalence of the practice across the industry. Because regulators determined that this information is not critical in demonstrating that reclamation is an essential part of production, this requirement was eliminated.

Despite the changes to the federal regulations, state regulatory agencies can be more stringent if there are localized specific waste issues.

For More Information

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The agency also streamlined the requirements for treatability study reports for testing facilities. The requirement in Section 261.4(f)(9) to submit estimates of the number of studies and the amount of waste to be used in treatability studies for the current year has been eliminated. The requirement for preparing and submitting an annual report containing information for the previous year, however, was retained.

Semiannual Reports

EPA changed the submittal frequency for corrective action effectiveness and progress reports, as required by Sections 264.100(g), 264.113(e)(5), and 265.113(e)(5). Previously, these reports were submitted semiannually, but they can now be submitted annually.

Summary

The changes that apply to generators took effect on May 4, 2006. Again, those states that have an EPA-authorized RCRA program will need to have separate rulemaking and approval activities to incorporate these changes.

Despite the changes to the federal regulations, state regulatory agencies can be more stringent if there are localized specific concerns about the consequences of these changes. All states can also use the omnibus authority of RCRA Section 3005(c) for specific facilities where risk resulting from site-specific circumstances not identified in EPA's rulemaking process is believed to exist. Note also that the changes in the RCRA Burden Reduction Initiative do not affect the biennial report on hazardous waste, which is still required.

EPA is allowing the changes in the RCRA Burden Reduction Initiative to be implemented as Class 1 permit modifications without prior approval, with the exception of the reduced inspection frequencies for Performance Track member facilities. These are to be implemented as Class 1 permit modifications with prior approval.

The Principal Center Is Ready to Help

The Principal Center stands ready to help you navigate through the requirements of the RCRA Burden Reduction Initiative. We can work with you to determine if your Center is eligible for any of these regulatory changes. Here are but a few of the services we can offer you in relation to the RCRA Burden Reduction Initiative:

- Preparation of an integrated contingency plan
- Updating Standard Operating Procedures (SOPs) and training
- Communications with EPA and state regulators to evaluate applicability
- Source reduction and pollution prevention strategies