

RCRA Update

CIBO
ENERGY AND ENVIRONMENTAL COMMITTEE MEETING
MARCH 7-8, 2017
ARLINGTON, VA

COAL COMBUSTION RESIDUALS

- ▶ **S. 612 (114th): Water Infrastructure Improvement for the Nation Act (WIIN)
Signed Dec. 16, 2016**
- ▶ **Title II—Water and Waste Act of 2016**
 - ▶ Subtitle C—Control of Coal Combustion Residuals
 - ▶ Sec. 2301. Approval of State programs for control of coal combustion residuals.
 - ▶ Provides EPA oversight and approval of state programs with respect to 40 CFR Part 257 related to coal combustion residuals.

SUMMARY of CCR Issues Moving Forward

- ▶ Need to monitor what actions the State initiates to obtain approval under this program per WIIN Act (This would be a State by State review)
- ▶ There is the outstanding issue of a regulations for the beneficial use of coal ash in col mine land reclamation.
- ▶ Last, but not lease, monitor what EPA does in light of the partial remand and modification to the existing rule
- ▶ Also, we need to monitor legal action and potential precedents that might evolved.

RCRA (SOLID WASTE) RULES OF INTERESTED

- ▶ There are 1 final rule and 2 proposed rules of interests
 - ▶ Hazardous Waste Generator Improvements Rule (Final)
 - ▶ Additions to List of Section 241.4 Categorical Non-Waste Fuels: Other Treated Railroad Ties (Proposed)
 - ▶ Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units (Proposed)

FINAL RULES

Final Rules

- ▶ Nov. 26, 2016 --- Hazardous Waste Generator Improvements Rule - published effective date May 30, 2017.

<https://www.epa.gov/hwgenerators/final-rule-hazardous-waste-generator-improvements>

Hazardous Waste Generator Improvements Rule

- ▶ Objectives of the rule:
 - ▶ reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community
 - ▶ providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection
 - ▶ providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner
 - ▶ making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist.



Two key provisions where EPA is finalizing flexibility are:

- ▶ Allowing a hazardous waste generator to avoid increased burden of a higher generator status when generating episodic waste provided the episodic waste is properly managed and
- ▶ Allowing a very small quantity generator (VSQG) to send its hazardous waste to a large quantity generator under control of the same person.

Provisions to increase flexibility for generators of hazardous wastes

- ▶ Allowing very small quantity generators (VSQGs) (previously known in the federal regulations as "conditionally exempt small quantity generators"- CESQGs) to send hazardous waste to a large quantity generator (LQG) that is under the control of the same person and consolidate it there before sending it on to management at a RCRA-designated facility, provided certain conditions are met. In some situations, organizations in industry, government, and academia may have satellite locations that qualify as VSQGs and that could take advantage of this provision to send their materials to an LQG within their company and ultimately to manage the hazardous waste in an environmentally sound manner rather than as an exempt waste.
- ▶ Allowing a VSQG or a small quantity generator (SQG) to maintain its existing generator category in the case of an event in which the VSQG or SQG generates a quantity of hazardous waste in a calendar month that would otherwise bump the generator into a more stringent generator regulatory category. Under this provision, generators that satisfy the listed conditions do not have to comply with the more stringent generator standards when an unusual event such as a cleanout or an act of nature causes its generator category to temporarily increase.

Improvements of environmental protection

- ▶ Updating the emergency response and contingency planning provisions for SQGs and LQGs to include Local Emergency Planning Committees (LEPC) among those emergency planning organizations with which a generator may make response arrangements and to require that new and existing LQGs submit quick reference guides with the key information when they either develop or update their contingency plans to local responders for easy access during an event.
- ▶ Requiring periodic re-notification for SQGs every four years (SQGs only notify once under the current system).
- ▶ Revising the regulations for labeling and marking of containers and tanks to clearly indicate the hazards of the hazardous waste contained inside.

Provisions to improve generator compliance

- ▶ Clarifying inconsistent guidance on which generator category applies when a generator generates both acute and non-acute hazardous waste in a calendar month.
- ▶ Revising the regulations for completing the RCRA biennial report to be consistent with the current instructions distributed with the form.
- ▶ Replacing the phrase “conditionally exempt small quantity generator” with the phrase “very small quantity generator” to be consistent with the other two generator categories—LQGs and SQGs.

Reorganization of the hazardous waste generator regulations

- ▶ Moving the VSQG regulations from section 261.5 of Title 40 of the Code of Federal Regulations (CFR) into [40 CFR part 262](#), where the regulations for SQGs and LQGs are located.
- ▶ Moving a number of the generator regulations that are currently located in other parts of the hazardous waste standards into 40 CFR part 262 to replace the current lists of cross references.

Technical corrections

- ▶ Correcting inadvertent errors in the regulations, obsolete programs, and unclear citations.

Summary Slides

- ▶ The following Slides provide a brief summary of requirements for each class of hazardous waste generators

Requirement	Conditionally Exempt Small Quantity Generators	Small Quantity Generators	Large Quantity Generators
Accumulation Requirements Manage hazardous waste in compliance with certain technical standards.	None	Basic requirements with technical standards for tanks or containers §§262.34(d)(2) and (3)	Full compliance for management of tanks, containers, drip pads, or containment buildings §262.34(a)
Accumulation Time Limits Determine amount of time hazardous waste is allowed to accumulate on site.	None	≤ 180 days or ≤ 270 days (if transporting greater than 200 miles) §§262.34(d)(2) and (3)	≤ 90 days §262.34(b)
Air Emissions Control hazardous air emissions from tanks and containers	Not required	Not required	Required Part 265 subparts AA, BB and CC from §262.34(a)(1)(i)
Biennial Report Report data from off-site shipments of waste during the previous calendar year	Not required	Not required	Required §262.41

Requirement	Conditionally Exempt Small Quantity Generators	Small Quantity Generators	Large Quantity Generators
<p>Closure Close equipment, structures, soils and units by meeting specified performance standards and disposal and decontamination requirements</p>	Not required	Required - tanks only §265.201(f)	Required - General §§265.111(a) and 265.114 from §262.34(a)(1)(iv) - Unit specific Part 265, subparts I, J, W, and DD
<p>Contingency Plan and Emergency Procedures Develop procedures to follow during an unplanned major event.</p>	Not required	Basic plan required §262.34(d)(5)(i-iv)	Full plan required Part 265 subpart D from §262.34(a)(4)
<p>EPA ID Number Acquire a unique EPA identification number that identifies generators by site.</p>	Not required	Required §262.12	Required §262.12
<p>Exception and Additional Reporting Report if any required copies of signed manifests are not received back Provide information on quantities and disposition of wastes upon request</p>	Not required	Required §§262.42(b) and 262.43	Required §§262.42 and 262.43

Requirement	Conditionally Exempt Small Quantity Generators	Small Quantity Generators	Large Quantity Generators
-------------	--	---------------------------	---------------------------

Facility Type Send off-site shipments to appropriate facilities for management	Facilities noted in §§261.5(f)(3) and (g)(3)	RCRA permitted/interim status facility Parts 264/265, 266/267 and 270	RCRA permitted/interim status facility Parts 264/265, 266/267 and 270
Land Disposal Restrictions Meet standards for placing on the land and associated requirements for certifications, notifications, and waste analysis plans	Not required	Required Part 268 from §262.34(d)(4)	Required Part 268 from §262.34(a)(4)
Manifest Tracking hazardous waste shipments using the multiple-copy manifest (required by DOT and EPA)	Not required	Required Part 262 subpart B	Required Part 262 subpart B

Requirement	Conditionally Exempt Small Quantity Generators	Small Quantity Generators	Large Quantity Generators
<p>On-Site Accumulation Quantity Determine amount of hazardous waste generators are allowed to "accumulate" on site without a permit.</p>	<p>≤1,000 kg ≤1 kg acute ≤100 kg of acute spill residue or soil §§261.5(f)(2) and (g)(2)</p>	<p>≤6,000 kg §262.34(d)(1)</p>	<p>No limit</p>
<p>Personnel Training Ensure appropriate personnel complete classroom or on-the-job training to become familiar with proper hazardous waste management and emergency procedures for the wastes handled at the facility.</p>	<p>Not required</p>	<p>Basic training required §262.34(d)(5)(iii)</p>	<p>Required §265.16 from §262.34(a)(4)</p>

Requirement	Conditionally Exempt Small Quantity Generators	Small Quantity Generators	Large Quantity Generators
Pre-Transport Requirements Package and label hazardous waste for shipment off site to a RCRA facility for treatment, storage, or disposal	Yes (if required by DOT)	Required §§262.30-262.33	Required §§262.30-262.33
Preparedness and Prevention Develop procedures to follow in the event of an emergency.	Not required	Required Part 265 subpart C from §262.34(d)(4)	Full plan required Part 265 subpart C from §262.34(a)(4)
Quantity Limits The amount of hazardous waste generated per month determines how a generator is categorized and what regulations must be complied with.	≤100 kg/month ≤1 kg/month of acute hazardous waste ≤100 kg/month of acute spill residue or soil §§261.5(a) and (e)	>100 <1,000 kg/month §262.34(d)	≥1,000 kg/month >1 kg/month of acute hazardous waste >100 kg/month of acute spill residue or soil §262.34(a)
Recordkeeping Maintain records of manifests , biennial reports , exception reports and waste testing	Not required	Required §262.40(a), (c), and (d)	Required §262.40

Requirement	Conditionally Exempt Small Quantity Generators	Small Quantity Generators	Large Quantity Generators
Waste Minimization Certify steps taken to reduce or eliminate the generation of hazardous waste	None	Good faith effort required <u>\$262.27</u>	Program in place required <u>\$262.27</u>

PROPOSED RULES

Proposed Rules

- ▶ Nov. 1, 2016 --- Additions to List of Section 241.4 Categorical Non-Waste Fuels: Other Treated Railroad Ties - Comments were due Jan. 3, 2017

<https://www.epa.gov/rcra/proposed-rule-additions-list-categorical-non-waste-fuels-other-treated-railroad-ties>

- ▶ Jan. 11, 2017 --- Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units - Comments were due Feb. 27, 2017.

<https://www.epa.gov/stationary-sources-air-pollution/federal-plan-requirements-commercial-and-industrial-solid-waste>

Additions to List of Section 241.4 Categorical Non-Waste Fuels: Other Treated Railroad Ties

- ▶ The Environmental Protection Agency (EPA or the Agency) is proposing to issue amendments to the Non-Hazardous Secondary Materials rule, initially promulgated on March 21, 2011, and amended on February 7, 2013 and February 8, 2016, under the Resource Conservation and Recovery Act.
- ▶ This action proposes to add other treated railroad ties to the list, which are processed creosote-borate, copper naphthenate and copper naphthenateborate treated railroad ties, under certain conditions depending on the chemical treatment.

GENERATORS AND POTENTIAL USERS OF THE NEW MATERIALS PROPOSED TO BE ADDED TO THE LIST OF CATEGORICAL NON-WASTE FUELS

<i>Primary industry category or sub category</i>	<i>NAICS^b</i>
Utilities	221
Construction of Buildings	236
Site Preparation Contractors	238910
Manufacturing	31, 32, 33
Wood Product Manufacturing	321
Sawmills	321113
Wood Preservation (includes crosstie creosote treating)	321114
Pulp, Paper, and Paper Products	322
Cement manufacturing	32731
Railroads (includes line haul and short line)	482
Scenic and Sightseeing Transportation, Land (Includes: railroad, scenic and sightseeing)	487110
Port and Harbor Operations (Used railroad ties)	488310
Landscaping Services	561730
Solid Waste Collection	562111
Solid Waste Landfill	562212
Solid Waste Combustors and Incinerators	562213
Marinas	713930

a Includes: Major Source Boilers, Area Source Boilers, and Solid Waste Incinerators.

b NAICS—North American Industrial Classification System.

Definition of listed railroad ties

- ▶ *Copper naphthenate treated railroad ties* means railroad ties treated with copper naphthenate made from naphthenic acid and copper salt.
- ▶ *Copper naphthenate-borate treated railroad ties* means railroad ties treated with copper naphthenate and borate made from disodium octaborate tetrahydrate.
- ▶ *Creosote-borate treated railroad ties* means railroad ties treated with a wood preservative containing creosols and phenols and made from coal tar oil and borate made from disodium octaborate tetrahydrate.

Previous Listing of Non-Waste Fuels - Effective March 9, 2016 -

- ▶ Three materials were listed as categorical non-waste fuels:
 - ▶ Construction and demolition wood processed from construction and demolition debris according to best management practices;
 - ▶ paper recycling residuals generated from the recycling of recovered paper, paperboard and corrugated containers and combusted by paper recycling mills whose boilers are designed to burn solid fuel; and
 - ▶ creosote treated railroad ties that are processed and then combusted in the following types of units: Units designed to burn both biomass and fuel oil as part of normal operations and not solely as part of start-up or shut-down operations, and units at major source pulp and paper mills or power producers subject to [40 CFR part 63](#), subpart DDDDD that combust CTRT and had been designed to burn biomass and fuel oil, but are modified (e.g. oil delivery mechanisms are removed) in order to use natural gas instead of fuel oil, as part of normal operations and not solely as part of start-up or shut-down operations.

Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units

- ▶ This action proposes the federal plan for existing commercial and industrial incineration (CISWI) units.
- ▶ This proposed action implements the Environmental Protection Agency's (EPA) emission guidelines (EG) adopted on February 7, 2013, as amended on June 23, 2016, in states that do not have an approved state plan implementing the EG in place by the effective date of this federal plan.
- ▶ The federal plan will result in emissions reductions of certain pollutants from all affected units covered.

Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units (continued)

▶ *Regulated Entities.*

- ▶ Owners or operators of existing CISWI units that are subject to the existing federal plan implementing the December 1, 2000 EG, and units not already subject to an EPA approved and effective state plan implementing the February 7, 2013, EG, may be regulated by this final action.
- ▶ Existing CISWI units are those that commenced construction on or before June 4, 2010 or that commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.
- ▶ Regulated categories and entities include those that operate CISWI units. Although there is no specific North American Industry Classification System (NAICS) code for CISWI units, these units may be operated by the categories of sources listed in Table 1:

TABLE 1—EXAMPLES OF POTENTIALLY REGULATED ENTITIES

Category	NAICS ¹ Code	Examples of potentially regulated entities
Any industrial or commercial facility using a solid waste incinerator.	211, 212, 486	Mining; oil and gas exploration operations; pipeline operators.
	221	Utility providers.
	321, 322, 337	Manufacturers of wood products; manufacturers of pulp, paper and paperboard; manufacturers of furniture and related products.
	325, 326	Manufacturers of chemicals and allied products; manufacturers of plastics and rubber products.
	327	Manufacturers of cement; nonmetallic mineral product manufacturing.
	333, 336	Manufacturers of machinery; manufacturers of transportation equipment.
	423, 44	Merchant wholesalers, durable goods; retail trade.

¹ North American Industrial Classification System.

TABLE 2—STATUS OF STATE AND TERRITORY PLANS

Status	States
I. EPA-Approved Implementation Plans	None so far.
II. Indicated intent to Submit Negative Declarations to the EPA	Massachusetts; Delaware; Maryland; North Carolina; Georgia; Mississippi; Minnesota; Arizona; California; Hawaii; Idaho.
III. Negative Declaration Submitted to the EPA	Connecticut; New Hampshire; Vermont; Rhode Island; Virgin Islands; District of Columbia; New Mexico; City of Albuquerque; Montana.
IV. Final Implementation Plans Submitted to the EPA	Alabama; Florida; South Carolina; North Dakota; Oregon.
V. Draft Implementation Plans Submitted to the EPA	West Virginia; Virginia.
VI. EPA Has Not Received a Draft or Final Implementation Plan or Negative Declaration.	New York; Illinois; Indiana; Texas; Louisiana; Oklahoma; Arkansas; Kansas; Missouri; Nebraska; Utah; Wyoming; South Dakota; Washington.
VII. Indicated Intent to Submit State Implementation Plan to the EPA ...	Kentucky; Tennessee; Michigan; Colorado.
VIII. Indicated Intent to Accept Delegation of Federal Plan	Maine; New Jersey; Puerto Rico; Pennsylvania.
IX. Indicated Intent to Accept Federal Plan Implementation by the EPA	Ohio; Wisconsin; Iowa; Nevada; American Samoa; Guam; Alaska; Commonwealth of the Northern Mariana Islands.

TABLE 4—ELEMENTS OF THE PROPOSED CISWI FEDERAL PLAN

Element of the CISWI Federal Plan	Location
Legal authority and enforcement mechanism	Sections 129(b)(3), 111(d), 301(a), and 301(d)(4) of the CAA.
Inventory of affected CISWI units	Docket ID No. EPA–HQ–OAR–2016–0664.
Inventory of emissions	Docket ID No. EPA–HQ–OAR–2016–0664.
Compliance schedules	40 CFR 62.14535 to 62.14575.
Emissions limits and operating limits	40 CFR 62.14630 to 62.14645.
Operator training and qualification	40 CFR 62.14595 to 62.14625.
Testing, monitoring, recordkeeping and reporting	40 CFR 62.14650 to 62.14760.
Record of public hearings	Docket ID No. EPA–HQ–OAR–2016–0664.
Progress reports	Section IV.I of this preamble.

QUESTIONS?

BEWARE OF CITIZENS SUITS REGARDING ENVIRONMENTAL COMPLIANCE
IN THE FUTURE