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December 24, 2015

Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

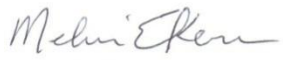
Attn: Docket ID No. EPA-HQ-RCRA-2012-0121

The Coalition for Responsible Waste Incineration (CRWI) appreciates the opportunity to submit comments on *Hazardous Waste Generator Improvements; Proposed Rule.* 80 FR 57,918 (September 25, 2015). CRWI is a trade association comprised of 25 members representing both generators and treatment, storage, and disposal facility operators.

Attached are specific comments on the proposed changes.

Thank you for the opportunity to comment on this proposed rule. If you have any questions, please contact me at (703-431-7343 or mel@crwi.org).

Sincerely yours,



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Specific comments

1. EPA is proposing to add the requirement to include RCRA waste codes on certain container labels.

   CRWI represents both captive and commercial hazardous waste combustion facilities. We asked our members how they used waste codes in their operations and received a range of responses. Commercial operators, not being the generators of the wastes, use EPA waste codes on labels for a number of purposes. One commercial operator responded that they required waste codes on each container to facilitate compliance with storage restrictions (e.g., not storing ignitable (D001) and reactive (D003) within 50 feet of the fence-line and not stacking D001 containers more than one high). Another commercial operator believes it is important to include waste codes so: 1) that the label can be compared to what's on the manifest and any attached Land Ban Restriction notifications and certifications; 2) the treatment, storage, and disposal facility (TSDF) can cross-reference that all of the waste codes on the container are included in its RCRA Part B Permit approved list, and 3) the TSDF can verify that it has received what the Generator indicated was being shipped.

   In general, most captive facilities did not use waste codes for their internal operations. Each company has developed a container identification system (e.g., bar codes) that meets their needs to identify and track each container. The requirements for including the words "Hazardous Waste," the identification of the contents; an indication of the hazard; and the date of beginning accumulation are sufficient to allow captive facilities to properly manage their wastes. Adding a waste code to containers managed on-site does not improve their ability to properly manage that waste.

   CRWI believes that including waste codes on container labels are only needed when those containers are transported off-site to a third party. We believe that when waste codes are included on a container label, the number of codes should have the same restrictions as are on the uniform manifest form (restricted to six waste codes). Any remaining applicable codes can be included on the LDR Notification or Certification form which is required to be submitted to the destination facility at least initially and whenever the characteristics of the waste changes. For management at captive facilities, the words "hazardous waste," the identification of the contents, an indication of the hazard, and the date of beginning accumulation are sufficient.

2. EPA is requesting comment on examples of when the Department of Transportation (DOT) shipping name would not meet EPA's intent of "identifying the contents of the container" and suggestions for addressing this situation. 80 FR 57,931.

CRWI believes that the proper DOT name even with N.O.S. (not otherwise specified) is adequate. DOT allows exceptions to the N.O.S. rule so that not every waste container is required to have the technical names provided (e.g., lab packs). In addition, Large Quantity Generators (LQGs) set up a profile with the facility where the waste is being sent. This profile also helps identify the contents of the container.

3. EPA is proposing revised regulatory language in an attempt to clarify the ramifications of not meeting the current requirements (independent requirements vs. conditions for exemption). EPA is proposing to make this change because the current regulatory language does not expressly state that a generator not meeting the terms of its exemption is an illegal treatment, storage, and disposal facility (TSDF). EPA is revising paragraph 262.10(g) to include a statement that generators are subject to enforcement under section 3008 of RCRA.

   While we understand and support the desire of the Agency to make sure hazardous wastes are properly identified and managed, we see this as an enforcement issue rather than a need for additional regulations. The current regulatory language is adequate to allow the regulating authority to inspect and properly respond to violations. Minor violations (e.g., missing a label on one of 50 containers, making an inspection one day late, etc.) can be addressed in a manner that does require the facility to apply for a RCRA Part B permit. However, if the violations are egregious or persistent, the current language and policy allows the regulating authority to remove the exclusions and require the facility to obtain a Part B permit. We do not believe any changes in the current regulations are needed. In fact, we believe that should the Agency finalize the proposed changes to 262.10(g), the unintended consequence would be that most large quantity generators would simply apply for RCRA Part B permits. They would do this to protect themselves from small, inadvertent infractions discovered during internal audits or inspections and from potential citizen suits. This would not accomplish what the Agency intends (getting more generators into compliance) but would add a significant burden (applying for and receiving a Part B permit and all the recordkeeping requirements that accompany the permit) on the generating facility as well as to the permitting authority which would have to process the applications. EPA currently has adequate enforcement authority. Adding more restrictions would only punish the companies that are currently in compliance while not really changing the activities of the companies that are not meeting current requirements. Failure to meet current requirements is not improved by adding regulations but by adequately enforcing the regulations already in place. We do not see these additions as helpful in solving the problem the Agency has identified and suggest that the modification to 262.10(g) be dropped in the final rule.

4. EPA is proposing to modify the recordkeeping requirements for small and large quantity generators to include keeping records for both solid and hazardous waste.

CRWI has two concerns about the recordkeeping requirements for making a determination that a material is not hazardous waste as proposed in 262.11(e). First, there is a potential conflict with wastewaters that are discharged to a publically owned treatment works (POTW) or NPDES facility. To resolve this, we believe that the Agency should note in the rule that where individual states allow for aggregation in characterization and reporting of wastewaters to POTW or on-site NPDES permitted facility, the state should provide guidance on characterization requirements. This provision should not preclude states from allowing methods other than point of generation for waste streams such as wastewaters.

Second, keeping records of solid waste determinations adds immensely to the record keeping burden without providing any tangible improvement in environmental protection or benefits to the generator of the solid waste. Addition of this requirement would also create even greater confusion for the regulatory community—both generators and regulators alike.

For example, the way the regulatory language is proposed, it could easily result in delegated states requiring generators to keep records on a solid waste determination of typical office waste. The Agency attempts to address the concern about typical office/household waste in the preamble (80 FR 57,944) where it is stated.

> The focus of this provision is on solid wastes that have the potential to be hazardous wastes. Thus, for the purposes of this proposed provision, the Agency is not interested in entities that generate solid wastes that clearly have no potential to be hazardous, such as food waste, restroom waste, or paper products. There are literally hundreds of thousands of entities who generate such wastes. In addition, lawyers and accountants, business offices, religious organizations, governmental organizations, engineering and architectural firms, among other sectors, are not meant to be impacted by this provision for everyday municipal waste that does not have the potential to be hazardous.

Earlier in the preamble, the Agency states that “documentation will not be required for entities that do not generate a solid waste, as defined by § 261.2, or that generate a solid waste that has been excluded or exempted from RCRA Subtitle C controls.” 80 FR 57,943. Our major concern is that the proposed regulatory language can easily be interpreted as much broader than the stated intent in the preamble.

CRWI understands the need to retain certain records for hazardous waste determinations. The burden of making a hazardous waste determination always falls to the generator. If the generator classifies a material as a solid waste and not a hazardous waste, they should not be required to keep a record of that

determination. The generator may choose to keep those records but should not be required to do so. If that material is later found to be hazardous, then the generator would be in error and subject to enforcement. We believe that keeping records of solid waste determinations does nothing more than requiring an increased amount of recordkeeping without any additional protection for the environment. The proposed regulatory language in paragraph 262.11(e) should be modified to only require maintaining records of hazardous waste determinations.

In addition, the proposed regulatory language in paragraph (e) requires that the records "must" contain the "results of any tests, sampling, or waste analyses; records documenting the tests, sampling, and analytical methods used and 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 explain the knowledge basis for the generator's determination, as described at 40 CFR 262.11(d)(2)." We suggest the Agency change the word "must" to "may" because the information available to make these determinations will vary from one waste type to another. There is no reason to require all of this information. Once a single test shows that a material is a hazardous waste, it becomes a hazardous waste. Retaining records of any additional information is simply not needed.

5. EPA request comments on whether the 3 year record retention should be extended to life of the facility for 262.11. (80 FR 57,945)

CRWI believes that three years is an appropriate length of time to retain records for waste determination. This length of time is adequate to allow inspectors to determine if the facility is properly characterizing the waste and maintaining the required records. In the past, the Agency has reduced the recording keeping requirements (e.g., see the 2006 Burden Reduction rule (64 FR 16,862, April 4, 2006). In this rule, the Agency made a number of changes in the recordkeeping requirements that resulted in a three year record retention requirement. These are summarized in Table 2 at 64 FR 16,866. The purpose of the Burden Reduction rule was to remove requirements that were not necessary. We believe that the current three years records retention requirements falls in line with the Agency's policy on recordkeeping as discussed in the Burden Reduction Rule.

6. EPA is proposing to require a generator to accurately characterize the waste including application of correct RCRA codes (80 FR 57,945 and 262.11).

CRWI has concerns about the requirement in the opening paragraph of 262.11 that a generator must make "an accurate determination of whether that waste is a hazardous waste…" Our concern is with the use of the word "accurate." This word means the quality or state of being correct or precise. In scientific and engineering terms, it is a measure of the degree to which the results conform to the correct value, and implies there is some measure of a statistical determination of

accuracy. We do not believe that this is what the Agency intended. In addition, if the facility chooses to handle a non-hazardous solid waste as a hazardous waste, that determination is not "accurate." While it is still protective of the environment (per EPA's expressed concern 80 FR 57,945), it is not accurate. While it is unlikely that a regulatory authority would cite a facility for over protecting the environment, we believe the use of the word "accurate" is not appropriate in this circumstance. We suggest the following modification of the proposed regulatory language in 262.11.

> A person who generates a solid waste, as defined in 40 CFR 261.2, must make ~~an accurate~~ determination of whether that waste is a hazardous waste using the following steps:

7. EPA asks comment on the development of an electronic decision making tool for hazardous waste determinations and takes comment on whether that would be a helpful tool for generators. 80 FR 57,946

   Most of CRWI member companies have already developed a decision making tool that assists them in the hazardous waste determinations process. Often these are customized to fit the unique manufacturing conditions for that particular facility. It would be a difficult exercise (and not a very productive one) to attempt to develop a procedure that would fit every possible scenario. One-size-fits-all simply would not work in these circumstances. In addition, we would like to point out that the Agency has already developed a complete chapter in the RCRA Orientation Manual on identification of hazardous waste. We see no reason to develop an electronic decision tool.

8. At 80 FR 57,957, the Agency explains that they are modifying the requirements in 265.37 and copying them into a new section 262.256. Section 265.37 currently requires a facility to "attempt to make the following arrangements, as appropriate for the type of waste handled at his facility…" Later in the same section, the Agency proposes to change the requirement from an "attempt" to a "must."

   CRWI believes the modification from an "attempt" to a "must" is inappropriate. We do not object to develop arrangements with local emergency responders. In fact, we encourage it. However, as the current proposed rule is written, it makes the generator responsible for the activities of the local emergency responders. No one can be held responsible for the actions or others. All the facility can do is attempt to develop an arrangement. The facility can develop the plans, send site maps, tell the local emergency responders what wastes are in each area, etc., but unless the local emergency responders agree to develop an arrangement, it simply is not going to happen. The facility has no authority over the local emergency responders so they cannot force an "arrangement." An "arrangement" can be made only when both parties agree. We suggest that the Agency modify the

language in 262.256 to reinstate the "attempt" language from the original 265.37(a) as follows.

> § 262.256 Arrangements with local authorities.
> (a) The large quantity generator must attempt to make arrangements with the Local Emergency Planning Committee for the types and quantities of hazardous waste handled at the site, as well as the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, then the large quantity generator must attempt to make arrangements with the local fire department and other relevant emergency responders (*e.g.,* police and hospitals).
> (1) A large quantity generator that must attempt to make arrangements with its local fire department must determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.
> (2) As part of this coordination, the large quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the site, the properties of the hazardous waste handled at the site and associated hazards, places where personnel would normally be working, entrances to roads inside the site, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the site.
> (3) Where more than one police or fire department might respond to an emergency, the large quantity generator shall attempt to enter into agreements designating primary emergency authority to a specific fire or police department, and agreements with any others to provide support to the primary emergency authority.
> (b) The large quantity generator shall maintain records documenting the arrangements with the Local Emergency Planning Committee, or if appropriate, with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include a certified letter or any other documentation that confirms such arrangements actively exist.

9. EPA is requesting comments on a waiver for those organizations that have their own emergency response teams (80 FR 57,959).

CRWI supports a waiver for any organization that has its own emergency response team from the requirements to make arrangements with local response organizations. We see no reason for facilities that provide their own 24-hour response teams to make arrangements with a local emergency planning committee since the first responders will be the company's own response team.

10. EPA is proposing to change 262.41 to reference EPA form 8700-13 instead of having the current list of requirements (see 80 FR 57,970 and 58,002).

    EPA's stated reason for making this change is that the biennial report forms have evolved over time and that the requirements in 262.41 no longer reflect the current reporting requirements. In theory, CRWI does not oppose the idea of changing the requirements in the current version of 262.41 from a list to the requirements in EPA form 8700-13. We understand that requirements change over time but would be concerned if future changes to form 8700-13 were made without soliciting public input on those changes. As long as the Agency provides opportunities for public participation to any future changes to form 8700-13 (or for that matter, any other EPA form), we support the proposed change to 262.41. However, if the Agency does not intend to provide public input to any future changes to this form, we oppose this proposed rule change.

11. Potential typographical error.

    The proposed modifications to 262.254 (80 FR 58,007) refers to 265.252 twice. We believe this is a typographical error (since 265.525 is regulations on waste piles) and should instead point to 262.252. Please check this reference to make sure it is correct.