



Adopting the Generator Improvements Rule in California

Presented by

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This information should not be used in place of the actual
regulations.*

Overview

- **Background**
- **Authorization Process**
- **Rulemaking Process**
- **Mandatory Requirements**
- **Additional Requirements**
- **Optional Requirements**
- **Next Steps**

Acronyms

- U.S. EPA – United States Environmental Protection Agency
- DTSC – Department of Toxic Substances Control
- HSWA – Hazardous and Solid Waste Amendments of 1984
- RCRA – Resource Conservation and Recovery Act
- GIR – Generator Improvements Rule
- CFR – Code of Federal Regulations
- HSC – Health and Safety Code
- CCR – California Code of Regulations
- LQG – Large Quantity Generator
- SQG – Small Quantity Generator
- VSQG – Very Small Quantity Generator
- CESQG – Conditionally Exempt Small Quantity Generator
- SAA – Satellite Accumulation Area
- CAA – Central Accumulation Area
- TSDF – Treatment Storage and Disposal Facility
- OAL – Office of Administrative Law

Background

- RCRA subtitle C (i.e. federal hazardous waste management program) was enacted in 1976 and amended in 1984 by the Hazardous and Solid Waste Amendments
- The GIR updated the federal hazardous waste generator requirements of Title 40 of the Code of Federal Regulations
- The new regulations were adopted by U.S. EPA on November 28, 2016 and became effective federally on May 30, 2017
- U.S. EPA's primary objectives include: re-organization, providing clarity, strengthening environmental protection, and providing greater flexibility to generators

Authorization Overview

- U.S. EPA provides the minimum requirements that must be met in all states regarding the management of hazardous waste
- States have the option to implement the federal hazardous waste management program or their own state hazardous waste management program (if authorized by U.S. EPA)
- State Authorization is achieved by submitting an authorization package to the regional U.S. EPA office and U.S. EPA approves the package
- Once approved by U.S. EPA, that state is authorized to administer the state hazardous waste management program in lieu of the federal hazardous waste management program
- California was authorized in 1991 to administer its state program

Statutory Authority

- There are two statutes that grant DTSC the authority to administer the state hazardous waste management program
 1. Title 42 of US Code section 6926 Authorized State hazardous waste programs
 2. Chapter 6.5 of CA Health and Safety Code section 25159

Regulatory Effect

- Any regulations adopted under RCRA do not take effect in an authorized state until they are adopted and authorized in that state
- The generator improvements rule was federally adopted in the Code of Federal Regulations
- **These regulations don't take effect in California until DTSC adopts them, or parts thereof**

What requirements apply in California?

- Health and Safety Code, Division 20, Chapter 6.5 *Hazardous Waste Control*
- California Code of Regulations, Title 22, Division 4.5 *Environmental Health Standards for the Management of Hazardous Waste*
- What about requirements in Title 22 of CCR that reference requirements in Title 40 of CFR that have changed?
 - **The current hazardous waste requirements in Title 22 of CCR still apply as originally authorized by U.S. EPA before the GIR was adopted into Title 40 of CFR.**

Maintaining Authorization

- In order to maintain state authorization, the state program must be:
 1. At least as stringent as; or
 2. More stringent than the federal program
- Any federal requirement under the GIR is compared to existing state requirements and categorized as either:
 1. More stringent;
 2. Less stringent; or
 3. Neither more nor less stringent
- Stringency is not the only factor. A federal requirement may also become broader in scope, which would require authorized states to adopt the requirement to maintain authorization.

The Rulemaking Process

- There are two different types of rulemakings being used to adopt regulations under the GIR
 1. Section 100 Rulemaking
 2. Regular Rulemaking

Section 100 Rulemaking

- California Code of Regulations, Title 1, Section 100
- Allows for changes without regulatory effect (i.e. non-substantial changes) including:
 1. Renumbering, relocating
 2. Repeals
 3. Final court judgment invalidating a regulation
 4. Syntax/cross-referencing/grammar/punctuation
 5. Authority and/or reference citations
 6. Conforming to mandated statutory language

Section 100 Rulemaking (Cont.)

- HSC, Chapter 6.5, Section 25159.1 deems any regulation proposed for adoption by DTSC to maintain authorization to administer the state hazardous waste program to be a non-substantive change without regulatory effect for the purposes of Section 100 of Title 1 of the California Code of Regulations, provided that the regulation is not more stringent and is not broader in scope than the corresponding federal regulations.
- Public participation is not required

Regular Rulemaking Process

- Most proposed regulations submitted to the OAL use the regular rulemaking process.
- The regular rulemaking process includes comprehensive public notice and comment requirements.
- It requires that documents and information on which the rulemaking action is based be available for review and inspection.
- It requires information about the estimated economic and fiscal impact of the proposed regulations.
- This comprehensive process is intended to further the goal of public participation in the rulemaking process and to create an adequate rulemaking record for review by OAL and the courts.

Mandatory Requirements

1. New re-notification requirements
2. Enhanced labeling and marking
3. Enhanced pre-transportation marking
4. Closure regulations
5. New requirements for incompatible wastes in SAAs
6. SQGs and LQGs must attempt to make contact with local authorities and document the attempt
7. LQGs must update their contingency plan to include a quick reference guide

1. Re-notification

What has changed?

1. SQGs must re-notify every four years starting in 2021 using EPA Form 8700-12.
(Note: SQGs are already required to re-notify every two years in California, but now they must use EPA Form 8700-12)
2. LQGs must re-notify by March 1 of each even number year. LQGs may submit their re-notification as part of their biennial report required under 40 CFR 262.41.
 - LQGs must report all hazardous waste generated in a calendar year, even when it is managed the next year
 - LQGs must report for all months in the year, even if SQG for some of those months

Where is it located?

- Federal: 40 CFR 262.18(d)(1) & (d)(2)
- State (Proposed): 22 CCR 66262.18(d)(1) & (d)(2)

2. Enhanced Labeling and Marking

What has changed?

Requires generators to label or mark their tanks and containers with the following:

1. The words "Hazardous Waste"
2. An indication of the hazards of the contents of the tank or container

These labeling and marking requirements are existing California requirements that remain unaffected by this rule

Where is it located?

- Federal: 40 CFR 262.15(a)(5), 262.16(b)(5) & (b)(6), 262.17(a)(4) & (a)(5)
- State (Proposed): 22 CCR 66262.15(a)(5), 66262.16(b)(6), 66262.17(a)(5)

2. Enhanced Labeling and Marking (cont.)

Note:

The only difference between marking and labeling containers in SAAs or CAAs is:

1. Containers in SAAs must be marked or labeled with the date the maximum volumes (or mass) are exceeded; and
2. Containers in CAAs must be marked or labeled with the date the hazardous waste first began accumulating

Both of these dating requirements are existing California requirements that remain unaffected by this rule

3. *Enhanced Pre-Transportation Marking*

What has changed?

Requires generators to mark their containers with the applicable EPA hazardous waste number(s) prior to shipping their containers offsite to a RCRA-permitted TSDf

- Simplifies the consolidation process at the TSDfS
- Allows TSDfS to operate more efficiently
- Codification of an existing good management practice

Where is it located?

- Federal: 40 CFR 262.32(b) and (c)
- State (Proposed): 22 CCR 66262.32(b)

4. LQG Closure Regulations

What has changed?

- Revisions to the closure regulations for LQGs
 1. Consolidating the closure regulations into one section
 2. These regulations consist of two components:
 - i. Closure of a waste accumulation unit, such as a tank, container, or containment building; and
 - ii. Closure of a generator's facility
 3. LQGs must notify U.S. EPA or the authorized state using the Site ID form (EPA Form 8700–12) at least 30 days prior to closing their facility, and
 4. LQGs must notify U.S. EPA or the authorized state within 90 days after closing the facility
- The regulations identify clean close requirements and expand the applicability of closure regulations to containers in CAAs

Where is it located?

- Federal: 40 CFR 262.17(a)(8)
- State (Proposed): 22 CCR 66262.17(a)(8)

5. Incompatible Wastes in SAAs

What has changed?

Three special requirements for incompatible wastes in SAAs:

1. Incompatibles must not be placed in the same container;
2. Hazardous waste must not be placed in an unwashed container that previously held an incompatible; and
3. A container holding an incompatible must be separated from the other material by means of a dike, berm, wall, or other device

These special requirements for incompatible wastes are existing California requirements that remain unaffected by this rule

Where is it located?

- Federal: 40 CFR 262.15(a)(3)
- State (Proposed): 22 CCR 66262.15(a)(3)

6. Attempting to Make Contact with Local Authorities

What has changed?

- SQGs and LQGs are now required to document their attempt to make arrangements with local authorities

Where is it located?

- Federal: 40 CFR 262.16(b)(8)(vi) & 262.256
- State (Proposed): 22 CCR 66262.16(b)(8)(F)2 & 66262.256

7. Quick Reference Guide (QRG)

What has changed?

1. Requires new LQGs to develop a quick reference guide that summarizes their contingency plan for emergency responders
2. Requires existing LQGs to develop a quick reference guide when revising their contingency plan

Where is it located?

- Federal: 40 CFR 262.262(b)
- State (Proposed): 22 CCR 66262.262(b)

Elements of the Quick Reference Guide

1. Types/names of hazardous waste and associated hazards
2. Estimated maximum amounts of hazardous wastes
3. Identification of hazardous wastes requiring unique/special treatment
4. Map showing where hazardous wastes are generated, accumulated and treated at the facility
5. Map of facility and surroundings to identify routes of access and evacuation
6. Location of water supply
7. Identification of on-site notification systems
8. The name of the emergency coordinator(s) and 24/7 emergency telephone number(s)

End of Mandatory Requirements

This marks the end of the mandatory requirements proposed for adoption in the Section 100 rulemaking

Additional Non-Substantive Requirements

1. Changing the term CESQG to VSQG
2. Re-organization of the regulations to make them more user friendly
3. Adding new definitions for CAA, VSQG, LQG, Non-Acute Hazardous Waste and modifying the definitions of SQG and Acute Hazardous Waste

1. Changing the term CESQG to VSQG

What has changed?

The federal regulations are no longer using the term CESQG. While this generator category never existed in California, the term CESQG is referenced various times throughout the regulations and statutes.

Where is it located?

- Federal: Varies
- State (Proposed): Varies

2. Re-organization

- **Re-organized the regulations as follows:**
 - Reserved section 66262.34 Accumulation Time
 - Created new sections for SAA (66262.15), SQG (66262.16), LQG (66262.17), and ID Number (66262.18) requirements
 - Also moved Preparedness, Prevention, and Emergency Planning Procedures from Articles 3 and 4 of Chapter 15 to the new Article 9 in Chapter 12 to avoid referring back and forth between chapters

3. Adding Definitions

- **Added the following definitions:** CAA, VSQG, LQG, Non-Acute Hazardous Waste
- **Modified the definitions** of SQG and Acute Hazardous Waste

Where is it located?

- Federal: 40 CFR Section 260.10 (Definitions)
- State (Proposed): 22 CCR Section 66260.10 (Definitions)

End of Additional Non-Substantive Requirements

- This is the end of the additional non-substantive requirements proposed for adoption in the Section 100 rulemaking
- The rest of the slides will cover requirements that will be workshopped for possible inclusion into the next rulemaking

Optional Requirements

1. Allowing VSQGs to send their hazardous waste to LQGs
2. Waiver to the 50 ft. rule for accumulating ignitable and/or reactive wastes at LQG facilities
3. Allowing generators to maintain their generator category during episodic generation
4. Adding new language for hazardous waste determination criteria
5. Distinguishing between independent requirements and conditions for exemption
6. Revisions to SAA requirements for SQGs and LQGs (6 changes in total)
7. Mixing non-hazardous waste with hazardous waste
8. Requirement prohibiting generators from disposing of hazardous liquid in landfills

1. Allowing VSQGs to Voluntarily Send Hazardous Waste to LQGs

What has changed?

This provision provides flexibility to VSQGs and LQGs by allowing VSQGs to send their hazardous waste to LQGs and allows LQGs to accept and consolidate hazardous waste generated offsite if certain conditions are met.

Where is it located?

- Federal: 40 CFR 262.14 (a)(5)(viii) and 262.17
- State (Proposed): None

2. Allowing LQG's to apply for a waiver from the 50 ft. rule

What has changed?

This provision allows LQGs to apply for a site-specific waiver from the 50 ft. rule for ignitable and reactive hazardous wastes.

Where is it located?

- Federal: 40 CFR 262.17(a)(1)(vi)
- State (Proposed): None

3. Episodic Generation

What has changed?

- This provision allows VSQGs and SQGs to maintain their existing generator category if they have an episodic event.
- The conditions include only one event per year, (the provision also defines planned and unplanned events), the completion and maintaining of records, and the tracking and accounting for hazardous wastes generated during the event.

Where is it located?

- Federal: 40 CFR 262, subpart L
- State (Proposed): None

4. New language for hazardous waste determination criteria

What has changed?

Six revisions in total regarding hazardous waste determinations. Requirements include clarifying language that waste determinations must be accurate to ensure proper cradle to grave management, making determinations at the point of generation, etc.

Where is it located?

- Federal: 40 CFR 262.11
- State (Proposed): None

5. Distinguishing between independent requirements and conditions for exemption

What has changed?

Added this section to clarify the difference between an independent requirement that applies to all generators of hazardous waste and a condition for exemption that must be met if a generator wishes to avoid becoming a permitted facility.

Where is it located?

- Federal: 40 CFR 262.1
- State (Proposed): None

6. *Satellite Accumulation Area Revisions*

What has changed?

This provision makes 6 total regulatory changes to the SAA requirements such as exceptions for keeping containers closed.

Where is it located?

- Federal: 40 CFR 262.15
- State (Proposed): None

6. *Satellite Accumulation Area Revisions (Cont.)*

The 6 revisions to SAAs are listed below:

1. Flexibility regarding keeping containers closed at all times during accumulation.
2. Clarifying the language of the three-day rule.
3. Flexibility to allow generators to accumulate liquid or solid hazardous waste.
4. Clarifying the regulations for situations when the maximum volume (or weight) is exceeded in a SAA.
5. Rescinding a Memo Regarding Accumulating Reactive Hazardous Waste Away From the Point of Generation
6. Examples of the Meaning of “Under the Control of the Operator”

7. Mixing Non-Hazardous Waste with Hazardous Waste

What has changed?

- Moved the requirements for mixing hazardous waste to new section 262.13, *Generator category determination*
 - Makes generators aware of the regulations that apply to them when determining their generator category

Where is it located?

- Federal: 40 CFR 262.13
- State (Proposed): None

8. Disposing of Hazardous Liquid in Landfills

What has changed?

EPA is including the existing requirement that prevents hazardous liquids from being disposed of in landfills directly in the generator regulations to remind generators that these requirements don't just apply to hazardous waste haulers or landfill operators, but also to hazardous waste generators.

Where is it located?

- Federal: 40 CFR 262.14(b), 262.35
- State (Proposed): None

End of Optional Requirements

This is the end of the optional requirements that will be workshopped for possible inclusion into the next rulemaking

To Summarize

- The GIR does not take effect in California until DTSC adopts it
- DTSC MUST adopt the mandatory requirements that are more stringent than existing state requirements in order to maintain authorization to implement the state hazardous waste program
- DTSC MAY adopt optional requirements that are either less stringent or neither more nor less stringent than existing state requirements, but adoption of optional requirements are not required to maintain RCRA authorization

Next Steps

1. Phase 1: Complete the Section 100 rulemaking for the mandatory and non-substantive requirements
 - Objective: Maintain state authorization to implement RCRA
2. Phase 2: After adoption of the proposed requirements in the section 100, DTSC will initiate review of optional requirements for possible adoption using the regular rulemaking process
 - Objective: DTSC, in coordination with Certified Unified Program Agency and industry stakeholders, will identify requirements to address environmental safety gaps

Useful Links

- DTSC Website: <https://dtsc.ca.gov/>
- DTSC GIR Web Page: <https://dtsc.ca.gov/generator-improvements-rule/>
- Subscribe to the *GIR* E-List: <https://dtsc.ca.gov/dtsc-e-lists/>
- EPA GIR Web Page: <https://www.epa.gov/hwgenerators/final-rule-hazardous-waste-generator-improvements>
- Project Email: gir@dtsc.ca.gov

Questions

