

**Statement of Basis and Purpose
Rulemaking Hearing of May 15, 2018**

8.91 Basis and Purpose.

These amendments to 6 CCR 1007-3, Parts 260, 261, 262, 263, 264, 265, 267, 268, 273, 279, 99 and 100 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Hazardous Waste Generator Improvements Rule

These amendments to the Colorado Hazardous Waste Regulations (6 CCR 1007-3) finalize revisions to the state's hazardous waste generator regulatory program. These amendments correspond to the Environmental Protection Agency (EPA) rule published in the Federal Register on November 28, 2016 {81 FR 85732-85829}, and which became effective on May 30, 2017.

The primary intent of these amendments is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. The objectives of these revisions include:

- 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 the 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; and
- making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist.

General organizational changes being adopted as part of this rulemaking include the following:

- 1) Changing the name of Conditionally Exempt Small Quantity Generator (CESQG) to Very Small Quantity Generator (VSQG)
- 2) Integrating the generator requirements formerly found at § 261.5 (Special requirements for hazardous waste generated by conditionally exempt small quantity generators) into new § 262.13 (Generator Category Determination) and § 262.14 (Conditions for exemption for a VSQG) in the Part 262 generator regulations. With the addition of the new § 262.13 (Generator Category Determination), the existing § 262.13 (Generator Annual Fees) is being renumbered as § 262.9.
- 3) Separating the existing regulations at § 262.34 (Accumulation time) for Small Quantity Generators (SQGs), Large Quantity Generators (LQGs), and Satellite Accumulation Areas (SAAs) into three new sections:
 - a) § 262.15 – Satellite accumulation area regulations for small and large quantity generators;
Note: Colorado is specifying in § 262.15(a)(4) that the temporary venting of a container may be allowed on a case-by-case basis with prior written approval from the Division.
 - b) § 262.16 – Conditions for exemption for an SQG that accumulates hazardous waste; and
 - c) § 262.17 – Conditions for exemption for an LQG that accumulates hazardous waste.
- 4) Incorporating the text of relevant Part 265 regulations, where reasonable, into these new sections, rather than merely cross-referencing them.

Several of the revisions included in this rulemaking are more stringent than the current regulations, and Colorado is required to adopt equivalent provisions to the federal standards. These include the following:

1) **Marking & Labeling** – Requires SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas. These new marking and labeling requirements for waste accumulation units are being implemented to enhance 3 critical areas: risk communication; emergency preparedness and prevention; and the accuracy of hazardous waste determinations. These new, more stringent labeling requirements include the following provisions:

- a) § 262.14(a)(5)(viii)(B)(2) – VSQG container labeling requirements;
- b) § 262.15(a)(5)(ii) – SQG and LQG labeling requirements for containers in satellite accumulation areas;
- c) § 262.16(b)(5) – SQG Accumulation of hazardous waste in containment buildings;
- d) § 262.16(b)(6)(i)(B) – SQG container labeling requirements;
- e) § 262.16(b)(6)(ii)(B) – SQG tank labeling requirements;
- f) § 262.17(a)(4) – LQG Accumulation of hazardous waste in containment buildings;
- g) § 262.17(a)(5)(i)(B) – LQG container labeling requirements;
- h) § 262.17(a)(5)(ii)(B) – LQG tank labeling requirements; and
- i) § 262.17(c)(4)(iv)(B) – LQG tank and container labeling requirements for F006 waste.

2) **Closure Notification Requirements for LQGs {§ 262.17(a)(8)}** – Requires LQGs to notify EPA or their authorized state when they plan to close their facilities.

a) **Closure of a waste accumulation unit** – Requires LQGs to place a notice in their operating record within 30 days after closure identifying the location of the unit with the facility, or meet closure performance standards and notify the Department.

b) **Closure of the facility** – Requires the LQG to notify the Department no later than 30 days prior to closing the facility. The LQG must also notify the Department within 90 days after closing the facility that it has complied with closure performance standards or notify if it can't complete a clean closure of the facility. LQGs that fail to complete clean closure of the facility are required to complete closure as a landfill under § 265.310 in the case of a container, tank or containment building, or under § 265.445(b) for a facility with drip pads.

3) **Re-notification Requirements for SOGs {§ 262.18(d)}** – Requires SQGs to re-notify every four years. Colorado is also requiring VSQGs that generate 3 gallons or more in a calendar year of hazardous waste codes F001, F002, F004, and/or F005 to re-notify the Department starting in 2021 and every four years thereafter using EPA Form 8700-12. This re-notification for VSQGs and SQGs must be submitted to the Department by September 1st of each year in which re-notifications are required, unless the VSQG or SQG has submitted an updated notification within the last four years.

4) **Biennial Reporting Requirements {§ 262.41}** – Requires LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG.

5) **Preparation of Contingency Plan Quick Reference Guide {§ 262.261(h)}** – Requires new LQGs and LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency. The Quick Reference Guide must contain the following elements:

- a) Types/names of hazardous waste and associated hazards;
- b) Estimated maximum amounts of hazardous wastes on-site at the facility;
- c) Identification of hazardous wastes requiring unique/special treatment;
- d) Map showing where hazardous wastes are generated, accumulated and/or stored at the facility;
- e) Map of facility and surroundings to identify routes or access and evacuation;
- f) Locations of water supply (e.g., fire hydrant and its flow rate);
- g) Identification of on-site notification systems (e.g., fire alarms, smoke alarms); and
- h) Name of emergency coordinator(s) and 24-hour emergency telephone number(s).

6) **Biennial Reporting Requirements for Owners or Operators of Facilities that Recycle Hazardous Waste Without Storing It {§ 261.6(c)(2)}** – Requires facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report.

A few of the proposed revisions included in this rulemaking are less stringent than the current hazardous waste regulation, and Colorado is not required to adopt these changes. These revisions include the following:

- 1) **LQG Consolidation of VSQG Wastes {§ 262.14(a)(5)(viii) and § 262.17(f)}** – Allows VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person.
- 2) **Waiver of the 50-foot Setback Requirement {§ 262.17(a)(1)(vi)}**– Allows LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary.

Colorado is not adopting amendments regarding the following portions of the federal rule:

1) **Episodic Generation Requirements {40 CFR Part 262, Subpart L}**. The Federal rule implements Alternative Standards for Episodic Generation at 40 CFR Part 262, Subpart L that allows VSQGs and SQGs to conditionally maintain their generator category if they experience an episodic hazardous waste generation event that causes them to exceed the generation quantity limit for their category in a particular month which would subject them to more stringent generator requirements. The new Federal rule is a complex system of notification and management requirements for planned events and unplanned events, and only allows one event per year with an option to petition for a second event. All waste generated during an episodic event has different labeling and tracking requirements from the regularly generated waste at the facility.

The new federal requirements seem like an unnecessarily complicated way to deal with episodic generation events that have not been a problematic issue in Colorado. The Division requires generators to comply with the requirements for whatever generator category they are in any particular month. The Division has always advised that as a best management practice, generators who generate near the limit for a particular category comply with the more stringent requirements in order to ensure that if they generate in excess of the allowable limit, they will already be in compliance.

If a facility experiences an unusual episodic event, the Division has worked with these facilities to ensure that they quickly and easily comply with the required regulatory standards for that one-time event. This is accomplished through guidance documents which include contingency plan templates, training templates and additional material designed to help generators comply with more stringent requirements.

Adoption of the new federal episodic generation event regulations will not afford any great relief to generators, are unnecessarily complex, and would be difficult to enforce. Colorado prefers to remain more stringent in order to ensure protection of human health and the environment in the management of these hazardous wastes.

However, Colorado is adopting a new Part 262, subpart L in order to clarify that generators experiencing an episodic event must comply with the requirements of the generator category that applies during any given month. Colorado is also allowing VSQGs or SQGs who experience one episodic event during a calendar year that subjects them to LQG status to maintain their generator category and be exempt from the requirement to file a biennial report, as long as they comply with all of the other LQG requirements.

2) **Amendment of § 261.420** – Colorado is not adopting the addition of paragraph (g) to section 261.420, as Colorado has not adopted the optional Subpart M Standards (Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials) that were established as part

of the Revisions to the Definition of Solid Waste rulemaking of January 13, 2015 (80 FR 1694-1814).

3) **Amendment of §§ 262.200-262.216** – Colorado is not adopting these revisions, as Colorado has not adopted the optional Subpart K provisions (Subpart K – Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities) established as part of the Academic Laboratories Generator Standards rulemaking of December 1, 2008 (73 FR 72912-72960).

Additional items included in this rulemaking:

1) **VSQG Waste Collection Facilities** – Colorado is eliminating Section 263.10(b) to clarify that VSQG waste collection facilities are not considered transfer facilities under the Colorado Hazardous Waste Regulations (6 CCR 1007-3). VSQG Waste Collection Facilities receiving hazardous waste from non-affiliated generators in Colorado will be individually reviewed and approved by the Department pursuant to 262.14(a)(5)(iii). Authorization of such facilities by the Division will require the facility to comply with the LQG requirements, including a 90-day storage limit for the waste.

Allowing VSQGs to send their hazardous waste to a waste collection facility will help ease the financial and administrative burden for VQGs and encourage responsible waste management, treatment, and disposal.

2) **Independent Requirements {§ 262.10}** – One of the objectives of this rule was to clarify which requirements for hazardous waste generators are conditions for exemption from the requirement to obtain a permit for the storage of hazardous waste on site at the generator’s facility and which requirements are independent requirements that all generators of hazardous waste must comply with regardless of whether they store hazardous waste on site. Colorado has expanded the list of independent requirements for generators from that of the Federal rule for requirements that are unique to Colorado and to clarify that notification requirements of Part 99 and the land disposal restriction requirements of Part 268 are considered independent requirements in Colorado. The independent requirements that are unique to Colorado are: Section 262.9 (Generator Annual Fees) and Section 262.43 (Additional Reporting).

3) **Retention of more stringent provisions.** As part of this rulemaking, Colorado is also retaining the following more stringent provisions that currently exist in § 261.5, § 262.34, § 262.52, and § 262.174 of the regulations:

a) **Prohibition of CESQG to dispose of waste on-site {§ 261.5(f)(3)(iv) and (g)(3)(iv)}** – Colorado regulations currently specify that a conditionally exempt small quantity generator of hazardous waste may not dispose of his/her hazardous waste on-site. This requirement for VSQGs is now located at § 262.14(a)(5) of the regulations.

b) **Requirement for CESQG generating F001, F002, F004, and F005 waste to notify {§ 261.5(b)(2)}** – Colorado regulations currently require CESQGs that generate 3 gallons or more per calendar year of hazardous waste codes F001, F002, F004 and/or F005 to notify the Department of their hazardous waste activities and obtain an EPA Identification Number. This requirement for VSQGs is now located at § 262.10(a)(1)(i)(E) of the regulations.

c) **Requirement to complete Self-Certification Checklist {§ 261.5(b)(4) and § 262.43(b)}** – Colorado regulations currently require any generator, including CESQGs, that receive a Self-Certification Checklist from the Department to complete and return the checklist within the timeframe specified in the instructions. This requirement is now located at § 262.10(a)(1)(i)(D) for VSQGs, § 262.10(a)(1)(ii)(H) for SQGs, and § 262.10(a)(1)(iii)(H) for LQGs.

d) **Requirement to document training for SQGs {§ 262.34(d)(5)(iii)}** – Colorado regulations

currently require documentation of training for SQGs of hazardous waste, and make training performance-based. This requirement for SQGs is now located at § 262.16(b)(9).

e) Satellite accumulation area time limit. {§ 262.34(c)(2) and § 262.34(g)(2)} – Unlike the federal requirement which allows 3 days, Colorado regulations require a generator that manages hazardous waste in satellite accumulation containers to move that container to the 180/270 or 90-day accumulation area immediately (i.e., within 24-hours) from when the 55-gallon limit is reached. This requirement is now located at § 262.15(a)(6).

f) Requirement for CESQGs to minimize releases {§ 261.5(b)(5) and 265.31(a)} – Colorado regulations require all generators, including CESQGs, to maintain and operate their facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents. This requirement is now located at § 262.14(d) for VSQGs, § 262.16(b)(8) for SQGs, and § 262.17(a)(6) for LQGs.

(g) Expanded list of weekly inspection requirements {§ 265.174} – Colorado regulations require a thorough inspection of hazardous waste containers to ensure that all of the Part 265 Subpart I requirements regarding use and management of containers and the applicable labeling requirements of § 262.34 are being met. These regulations also require that problems identified during the inspection be remedied. These requirements are now also located at § 262.16(b)(2)(iv) for SQGs, and § 262.17(a)(1)(v) for LQGs.

(h) Additional Contingency Plan Requirement {§ 262.261(g)} – Colorado regulations also require LQGs of hazardous waste to identify the fire protection district responsible for providing fire protection services to be identified in the contingency plan. If a facility is not within a fire protection district, the LQG must state that in their contingency plan, and operate under their own fire protection plan that has been approved by the Department. Colorado regulations also require identification of the local emergency planning committee (LEPC) for the area where the facility is located. In addition to § 265.52(g), this requirement is now also located at § 262.261(g).

4) **Replacement of References to Colorado Hazardous Waste Notification Form** – Colorado is revising the Colorado Hazardous Waste Regulations (6 CCR 1007-3) to remove all references to the Colorado Hazardous Waste Notification Form, and replace with a reference to EPA Form 8700-12.

5) **Amendment of § 100.33 Hazardous Waste Notification Fees.** Section 100.33 is being amended to clarify that generators filing electronically with the Division to change their generator status are not subject to the \$120 notification processing fee.

This Basis and Purpose incorporates by reference the applicable portions of the preamble language for the EPA regulations as published in the Federal Register at 81 FR 85732-85829, November 28, 2016.