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### The New Small Quantity Generator Rules: RCRA Reaches Small Business

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The New Small Quantity Generator Rules:  
RCRA Reaches Small Business

- 1986 Hal Winslow

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Getting A Handle on Hazardous Waste Control  
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I. SUMMARY OF FINAL EPA REGULATIONS FOR SQGs

A. SMALL QUANTITY GENERATORS (SQG)

SQGs are generally small to medium-sized operations such as vehicle maintenance shops, dry cleaners, photography labs, pesticide applicators and small manufacturers that generate between 100 and 1,000 kilograms (kg, 220 to 2,200 pounds) of hazardous waste in any calendar month. The 100 kilogram lower limit is approximately one-half barrel of regulated wastes-- solvents, paints, thinners, pesticides and other ignitable, corrosive, reactive or toxic wastes. (Preamble to Proposed SQG regulations, 50 FR 31278, 31284 (Aug. 1, 1985)) Both private and government shops are regulated.

B. SQGS ARE REQUIRED TO:

1. Identify which wastes are hazardous.  
(40 C.F.R. §§261.5 and 262.11\*)
2. Notify the State or EPA of their status as SQGs and obtain an EPA Identification number. (§262.12)
3. Accumulate hazardous waste on-site no longer than 180 days (or 270 days if shipping more than 200 miles) and comply with container rules. (§262.34)

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\* Amendments to 40 CFR Parts 260-270 applicable to SQGs were promulgated at 51 FR 10146, et. seq. (Mar. 24, 1986). Unless otherwise specified, all references are to sections of 40 CFR as amended.

4. Offer wastes only to transporters and facilities with EPA Identification Numbers (§262.12(c))
5. Comply with U.S. Department of Transportation (DOT) rules (49 CFR Parts 172 et. seq.) for shipping hazardous wastes. (§262.30 et. seq.)
6. Use a multi-part manifest to ship hazardous waste off-site. (§262.20(a), but see §262.20(e))
7. Maintain manifest copies for at least three years. (§262.40(a), 262.44)

D. SQGS ARE NOT REQUIRED TO:

1. Use a manifest if they have entered into qualified reclamation arrangements (for example, solvent services). (§226.20(e))
2. Submit biennial reports to EPA or the State. (§262.44)
3. File exception reports (Id. SQGs, should, however, either file an exception report or take other action if they do not receive an acknowledgment copy.)
4. Prepare formal, written Contingency Plans. (Id.)

E. COMPLIANCE DEADLINE: September 22, 1986

(51 FR 10146, 10170)

## II. IDENTIFYING SMALL QUANTITY GENERATORS (SQG)

### A. Categories of Hazardous Waste Generators

1. The Congressional mandate to regulate SQGs (§221(b) Hazardous and Solid Waste Amendments, P.L. 98-616 (Nov. 8, 1984), hereafter HSWA) creates the need to distinguish among three categories of generators:

a. "Large Quantity Generator" refers to an individual generating site (§260.10) that generates more than 1000 kilograms (kg, approx. 2,200 pounds) per month of hazardous waste. This group has been regulated since the initial RCRA rules were published (45 FR 33142 (May 19, 1980)).

b. "Small Quantity Generator (SQG)" refers to an installation that generates between 100kg (220 pounds, approx. one-half barrel) and 1000kg of hazardous waste in a calendar month.

c. Very Small Quantity Generator (VSQG)" refers to an installation that generates less than 100kg per month.

2. In the final regulations, EPA chose the official terminology "100kg to 1000kg Per Month Generators" to refer to the newly regulated group. EPA stated that it would continue to use the more common term "small quantity generator" to refer to any generator of less than 1000 kg per month. (51 FR 10146,

10151). This paper will use the terms defined in II.A.1., supra.

B. In anticipation of SQG regulation, EPA commissioned a study (National Small Quantity Hazardous Waste Generator Survey, Abt Associates, Cambridge MA, February 28, 1985) to identify the kinds of operations likely to be covered by new SQG rules. That study identified the following types of private or government entities:

1. METAL MANUFACTURING & PLATING
2. PESTICIDES FORMULATORS AND APPLICATORS
3. INDUSTRIAL CHEMICAL MANUFACTURING
4. INK AND PHARMACEUTICAL FORMULATORS
5. LAUNDRIES AND DRYCLEANERS
6. FUNERAL SERVICES AND CREMATORIES
7. CLEANING AND MAINTENANCE SERVICES
8. PHOTOGRAPHY AND GRAPHICS SERVICES
9. TEXTILE MANUFACTURING
10. VEHICLE MAINTENANCE
11. EQUIPMENT REPAIR
12. METAL MANUFACTURING & PLATING
13. CONSTRUCTION ACTIVITIES
14. WOOD MANUFACTURING & REFINISHING
15. PRINTING/CERAMICS
16. CLEANING AND COSMETICS MANUFACTURING
17. MEDICAL, RESEARCH AND ANALYTICAL LABS
18. WHOLESALE/RETAIL SALES

C. EPA estimates that some 275,000 operations fall into the SQG category. Experience in the training field suggests that this figure is conservative. The largest group-- EPA says 70% of all SQGs-- are business and government operations involved in vehicle and equipment maintenance. (50 FR 31278, 31284). Many of these operations engage in vehicle or equipment maintenance as an adjunct to their normal operations. Grocery store chains, for example, may be vehicle maintenance SQGs due to their operation of fleets of delivery vehicles.

### III. REGULATED WASTES AND QUANTITIES

#### A. Types of SQG Hazardous Waste

Hazardous Wastes generated by SQGs tend to fall into one of these categories: solvents, paints, thinners, pesticides, printing inks, photographic fixers and solutions, wood preserving agents. A practical problem for SQGs is determining which wastes are hazardous within the meaning of the RCRA regulations (40 CFR Part 261).

#### B. Calculating Waste Quantities

Potential SQGs must calculate the amount of hazardous waste they generate in a calendar month in order to determine which of the three generator categories-- LQG, SQG or VSQG --they fit into. EPA's preamble to the final regulations include some specific guidance for making this determination.

When making the quantity determination a generator need NOT count:

1. Any waste EXCLUDED from regulation under Section 261.4 (for example, waste legally discharged to Publicly Owned Treatment Works (POTWs)). (§261.5(c))

2. Wastes conditionally exempt from the quantity determination, for example, lead acid batteries that are reclaimed. (§261.6(a)(3)(ii))

3. Used Oil, since it is not yet regulated. (Note: the PROPOSED used oil recycling regulations (50 FR 49258 (Nov. 29, 1985)) would allow generators to exclude the quantity of their used oil that is recycled.)

4. Wastes already counted as part of a generator's quantity prior to on-site reclamation or reuse. (§261.5(d)(2)) For example, it is not necessary to count the sludge produced from on-site reclamation so long as the recycled waste was fully counted at the time of generation (51 FR 10146 , 10152)

### III. SQG REGULATIONS: HIGHLIGHTS AND ISSUES

A. Given both the novelty of the SQG regulations and the relative lack of sophistication on the part of operators, a number of significant implementation issues have already arisen. Many of these issues flow from the fact the current Resource Conservation and Recovery Act (RCRA, 42 USC §6921 et. seq.) regulations

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were written with large manufacturing facilities in mind. The following summary of major provisions of the SQG regulations highlights major issues identified to date.

B. Identify which wastes are hazardous (§262.11)

Perhaps the most difficult problem is simply that of the operator recognizing which wastes are covered by the RCRA regulations. Most operators are both uninformed and lack the kind of technical skills needed to make complex determinations under RCRA (50 FR 31278 , 31284) Congress recognized this problem in mandating education and outreach activities (HSWA §221(b)) and EPA has published some assistance materials of this type. The problems are more educational than technical in that wastes produced by SQGs tend to be fairly standard within each type of operation. (51 FR 10146, 10155)

B. Obtain An EPA Identification number (§262.12)

SQGs are required to complete EPA Form 8700-12 "Notification of Hazardous Waste Activity" in order to obtain an EPA Identification Number. (ID.) The proposed regulations discussed the possibility of exempting SQGs from this requirement, but the idea met with considerable opposition from hazardous waste management services needing to keep close track of the source of waste and LQGs concerned about unidentified

SQG waste adding to their own potential clean-up burdens under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, 42 USC 9601 et. seq). EPA states that regional offices had received over 28,000 applications for identification numbers for SQGs by the time the SQG regulations were published in final form-- over six months prior to the effective date. SQGs are likely to experience problems getting wastes shipped off-site due simply to probable agency delays getting the many notification forms processed and identification numbers mailed.

C. Extended Accumulation Periods

1. In HSWA, Congress authorized extended storage periods for SQGs in an effort to lessen the costs of handling SQG hazardous waste at off-site facilities. (42 USC §6921(d)(6), as amended (Supp. 1986)) For many SQGs, a major portion of management costs are attributable to transportation. (51 FR 10146, 10173) Accordingly, SQGs are authorized to accumulate hazardous waste on-site for up to 180 days (or 270 days if SQGs must ship more than 200 miles).

2. To qualify for the extended accumulation periods, SQGs must comply with rules governing management of containers (§265.170 et.seq.) One of those provisions (§265.176) prohibits accumulation of ignitable or corrosive wastes within fifty feet of the property line. However, many SQGs are located on lots

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that are not large enough to comply with this rule. In response, EPA exempted SQGs from this requirement in the final regulations. (§262.34(d)(2))

3. There may be a serious compliance problem with the 180-day accumulation period in states such as Colorado which are authorized by EPA to administer their own hazardous waste management programs. Unlike normal RCRA rulemakings, HSWA regulations go into effect in authorized states on the same dates as in other states. (42 USC 6926(g)) Since the rules in authorized states can not be LESS stringent than federal rules, the 100 kilogram cutoff will go into effect on September 22, 1986 in both authorized and unauthorized states. However, since state rules can be MORE stringent than federal rules, states would seem to be obligated to enforce the more-stringent 90-day accumulation rule already on the books (40 §262.34 (July 1, 1985 revision)). Without an emergency rulemaking, SQGs face potentially massive noncompliance out of confusion-- a situation that could seriously hamper long-term implementation efforts.

#### D. Use of Manifests

##### 1. Single v. Multiple Copy Form

The proposed regulations would have authorized SQG use of a single copy "one-way" manifest when shipping waste off-site. (50 FR 31278, 31290)

Though viewed as a reduction of paperwork burden, this approach met with severe opposition from both hazardous waste management facilities and trade associations representing operations affected by the SQG rules (51 FR 10146, 10155). The lack of an acknowledgment copy to return to SQGs (§265.71) undermines the most basic "cradle-to-grave" principle of RCRA. In the final regulations, EPA agreed with commentors and will require the multi-part "round trip" manifest when shipping hazardous waste off-site. (51 FR 10146, 10155) In addition, SQGs must maintain copies of their manifests for at least three years. (Id., 10159)

## 2. Qualified Reclamation Agreements

In order to encourage recycling, EPA has provided an exemption from the requirement that waste be shipped off-site only with a manifest. (§262.20) In order to qualify for this exemption, the SQG must have a contract with the reclaimer which specifies the type of waste and shipment frequency; the transport vehicle must be owned and operated by the reclaimer; the generator must maintain copies of the agreement for three years after its termination or expiration; and transporters must record manifest-type information on a log. (§262.20(e) and §263.20(h)) The final regulation expanded this exemption somewhat to cover, for example, reclamation of dry cleaning filters even though only a

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small portion of the usable product is reclaimed. (51 FR 10146, 10156)

3. The new regulations exempt SQGs from the requirement that they file exception reports in cases where the generator does not receive the acknowledgment copy of the manifest within 35 days. (§262.42 and §262.44) While this exemption should help keep SQGs from some inadvertant noncompliance, the danger is that SQGs will not take action in cases where nonarrival of the acknowledgement copy reflects improper waste management. The better solution may have been a performance standard for taking action if acknowledgement copies are not received as was done with emergency preparation (See E.1., below).

#### E. Planning and Reporting Exemptions

Along with the HSWA mandate to regulate SQGs, Congress also favored simplification of the SQG regulations as much as possible. (50 FR 31278, 31283) In response, the final regulations exempt SQGs from the requirement that they prepare formal written Contingency plans or submit biennial reports to EPA or the State. (51 FR 10146, 10163 et. seq.)

1. Contingency Plans are required of any generator who wishes to accumulate hazardous waste on-site. (§262.34(a)(4), incorporating by reference Subparts C and D of Part 265) The final regulations

substitute a set of performance standards for the formal, written Contingency Plan. (51 FR 10146, 10182) These standards require SQGs to designate an emergency coordinator, post specified emergency information, ensure that all employees are familiar with proper waste handling and emergency procedures and respond appropriately to any emergencies that arise. (§262.34(d)(4)).

2. In regulations published to implement HSWA (50 FR 28702, July 15, 1985), SQGs were not required to comply with the requirement that generators establish a program to minimize the volume of toxicity of their hazardous waste stream. (42 USC 6922(b)) Since EPA had not specifically requested comment on imposing the waste minimization requirement on SQGs, the agency issued a new call for comments. (51 FR 10174 (March 24, 1986)) Given the amount of concern and confusion already existing among SQGs, EPA would probably be better served by at least postponing the imposition of this requirement until SQGs have had some implementation experience. Until then, economic considerations will probably encourage a lot of waste minimization by SQGs.

#### **IV. SQGs AND RCRA PERMITS**

Generators are not normally required to go through the complicated and expensive process of acquiring a

RCRA Treatment, Storage or Disposal (TSD) permit, nor to comply with the extensive regulations imposed on TSDs. However, one effect of the new SQG rules will be to require RCRA Permits in some situations.

A. On-Site Treatment: Permit Or No?

Large quantity generators engaging in on-site treatment, storage or disposal of hazardous wastes are required to obtain a RCRA permit (§270.1(c)). Although a number of small-scale on-site treatment options do exist, the costly and time-consuming permitting process is beyond the resources of most SQGs. EPA noted in the preamble to the final rules that, while it intends to impose the permitting requirement on SQGs engaging in on-site treatment of hazardous waste (51 FR 10146, 10168), "nothing in Sec. 262.34 precludes a generators from treating waste when it is in an accumulation tank or container covered by that provision" (Id.) Thus, if the small-scale treatment process can occur in accumulation containers or tanks and the process occurs within the allowed accumulation time, no RCRA permit will be required. This should encourage such on-site treatment as reducing pH levels.

B. On-Site Recycling?

While many on-site treatment activities require a permit, if the activity is classified as recycling there is no permit requirement because EPA does not regulate recycling activities. However, the

Agency does regulate the transport and storage of recyclable materials. (See, generally, 50 FR 614, Jan. 4, 1985) In the preamble, EPA said that a permit for recycling activities will be required only if all four of the following conditions exist:

IS required if all of the following conditions are met:

1. The material is a "solid waste", meaning not excluded from regulation.
2. The material is either a Listed or Characteristic hazardous waste.
3. The hazardous waste is not exempted by §261.6 (e.g., scrap metal).
4. The non-exempt hazardous waste is stored on-site for more than 180 days (or 270 days if it is to be shipped more than 200 miles).

Thus, SQGs can engage in on-site recycling so long as they comply with the standard time and quantity limits on accumulation contained in the new SQG regulations.

COMMENT: This should definitely help both small-scale recyclers and SQGs wishing to use small-scale on-site recycling equipment.

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