



COMMONWEALTH of VIRGINIA

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MEMORANDUM

Subject: Hazardous Waste Guidance Memo No. LPR-HW-01-2018: Hazardous Waste Generated at Remote Site Locations By Utility and Rail Companies

To: Regional Directors
Regional Land Protection Managers
Hazardous Waste Inspectors

From: Justin Williams, Land Division Director

A handwritten signature in black ink, appearing to read "Justin Williams".

Date: May 13, 2019

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Summary:

This guidance provides alternative procedures for utility and rail companies to manage hazardous waste generated at remote site locations.

Electronic Copy:

An electronic copy of this guidance is available on the Town Hall website at <http://www.townhall.virginia.gov/L/GDocs.cfm?boardid=119>.

Contact Information:

Please contact Lisa Ellis at (804) 698-4237 or lisa.ellis@deq.virginia.gov with any questions regarding the application of this guidance.

Certification:

As required by Subsection B of § 2.2-4002.1 of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in § 2.2-4101 of the Code of Virginia.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any alternative method. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Hazardous Waste Generated at Remote Site Locations By Utility and Rail Companies (4/12/2019) – Hazardous Waste Guidance Memo

1. Introduction – DEQ has received inquiries from utility and rail companies regarding how to manage hazardous wastes that are generated in easements or public rights-of-way at remote sites.

2. Background – Utility and rail companies sometimes generate hazardous waste while performing remote site field maintenance activities. Because the point of generation may occur on property at which the company has an easement agreement or a public right-of-way that is not on the site of the company that generates the waste, it is not practical or safe for the generator to leave the hazardous waste in place unattended for subsequent accumulation and management. The Generator Improvements Rule, which was adopted into Title 40 of the Code of Federal Regulations (40 CFR) effective 5/30/2017 and was incorporated into the Virginia Hazardous Waste Management Regulations (VHWMR) effective 4/8/2018, contains a mechanism to safely manage these wastes.

3. Authority – This guidance provides the procedures for companies that generate hazardous waste at remote site locations to consolidate waste in accordance with the VHWMR 262.14(a)(5)(viii) and 262.17(f).

4. Definitions –

Control - Control is defined in Title 40 of the Code of Federal Regulations (40 CFR) 262.17(f) as the power to direct the policies of the generator, whether by ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to “control” such generators.

Generator - Any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation.

Large Quantity Generators - A generator who generates any of the following amounts in a calendar month: (1) Greater than or equal to 1,000 kilograms (2200 lbs) of non-acute hazardous waste; or (2) Greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in §261.31 or §261.33(e) of this chapter; or (3) Greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 CFR §261.31 or §261.33(e).

Person - An individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

Point of Generation (POG) – The location where solid waste is initially produced, or where solid waste first leaves process equipment. Generators are required to determine whether this solid waste meets the definition of hazardous waste in accordance with VHWMR 262.11 at the point where it is first generated.

Remote Site - A site operated by the generator where hazardous waste is initially collected, at which generator staff, other than security staff, is not routinely located, and that is not contiguous to a staffed site operated by the generator of the hazardous waste or that does not have access to a staffed site without the use of public roads. Generator staff who visit a remote site location to perform inspection, monitoring, or maintenance activities on a periodic scheduled or random basis, less frequently than daily, are not considered to be routinely located at the remote site location.

Small Quantity Generators - A generator who generates the following amounts in a calendar month: (1) Greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2200 lbs) of non-acute hazardous waste; and (2) Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in §261.31 or §261.33(e) of this chapter; and (3) Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in VHWMR §261.31 or §261.33(e).

Very Small Quantity Generators - A generator who generates less than or equal to the following amounts in a calendar month: (1) 100 kilograms (220 lbs) of non-acute hazardous waste; and (2) 1 kilogram (2.2 lbs) of acute hazardous waste listed in §261.31 or §261.33(e) of this chapter; and (3) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in VHWMR §261.31 or §261.33(e).

5. Guidance - **Clearly lay out roles and responsibilities of DEQ staff, any timeframes involved, and any expectations.** Utility and rail companies often conduct field maintenance at remote sites in Virginia where a permanent, staffed location is not present. On occasion, these remote site maintenance activities result in the generation of a solid waste that may also meet the definition of hazardous waste. When solid wastes are generated at these remote locations, they may include maintenance waste from the upkeep of exposed equipment, or other types of hazardous waste. [Note: If materials generated can be reused as-is, or burned for energy recovery, they would be excluded from the definition of hazardous waste.] Because the point of generation (POG) may occur on property on which the company has an easement agreement or a public right-of-way that is not owned by or on the site of the company that generates the waste, it is not practical or safe for the generator to leave the hazardous waste in place unattended for subsequent accumulation and management.

Each POG along a railroad or utility line may be a separate waste generation location. If the material generated at each location is a waste, the waste generated at each location is subject to a hazardous waste determination in accordance with [40 CFR 262.11](#) at the POG. If the waste is not generated until it is returned to a different location to assess its usability, the waste is subject to a hazardous waste determination at that point of generation. Generators are also responsible for counting their hazardous waste to determine their generator status in accordance with [40 CFR 262.13](#), and to manage their waste appropriately based on their generator status. Many (but not all) of these locations are anticipated to be Very Small Quantity Generators (VSQG), but even VSQGs are required to send their hazardous waste off-site for proper management in accordance

with [40 CFR 262.14\(a\)\(5\)](#). Under the VSQG generator requirements of [40 CFR §262.14](#), VSQGs are not required to submit a notification of hazardous waste activity ([EPA Form 8700-12](#)), and are not required to use a hazardous waste manifest or hazardous waste transporter to transport their hazardous waste. In the past, these facilities were required to send their hazardous waste to either a permitted or interim status RCRA treatment/storage/disposal (TSD) facility, or a RCRA recycler in accordance with [40 CFR 262.14\(a\)\(5\)](#).

However, under the Generator Improvements Rule (GIR) which was adopted into the Virginia Hazardous Waste Management Regulations and became effective in Virginia on 4/8/2018, VSQG generators now have another option. VSQGs can send their hazardous waste for consolidation to a Large Quantity Generator (LQG) under the control of the same person as described in [40 CFR §262.14\(a\)\(5\)\(viii\)](#) provided that certain requirements are met by both the VSQG and the LQG. In order to take advantage of this management option, the VSQG must label its containers at the POG with the words “hazardous waste” and an indication of the hazards of the contents of the containers. VSQGs must send the waste to an LQG under the same person who meets the LQG requirements of [40 CFR §262.17](#), and the consolidation of VSQG waste requirements of [40 CFR §262.17\(f\)](#), including prior notification via [EPA Form 8700-12](#), recordkeeping, and container management, and the biennial reporting requirements of [40 CFR §262.41](#).

VSQGs that have not met the requirements for VSQG consolidation at an LQG cannot send their hazardous waste to an LQG under the same person. Similarly, railroad and utility companies that operate LQGs cannot receive hazardous wastes from a VSQG under the same person unless the LQG location has met all regular LQG requirements, as well as all the requirements for an LQG wishing to consolidate VSQG hazardous waste.

If a utility or railroad company location is not an LQG (i.e. they are SQG or VSQG) but wants to consolidate hazardous waste from VSQGs, the company can designate and operate that location as an LQG and comply with all the LQG requirements, including notification, biennial reporting, LQG annual fee, emergency planning, training, etc. See [40 CFR 262.17](#) for full LQG requirements.

Only VSQGs can consolidate their waste at an LQG. SQGs and LQGs still must send their hazardous waste off-site to a permitted or interim status RCRA TSD or RCRA Recycler. SQG and LQG hazardous waste can only be consolidated at the site of generation, at a central collection point that is a 10-day hazardous waste transporter transfer station, or at a permitted or interim status RCRA TSD or recycling facility.

Please note, SQG utility or railroad locations that are already in RCRAInfo may have notified as an SQG years ago and may never have been inspected. These sites may be operating as LQGs or VSQGs, rather than SQGs. It is the generator’s responsibility to count their hazardous waste on a monthly basis and determine their generator status, and to notify of that status, if required.

For utility, and railroad companies that have unmanned, remote sites that are points of generation across the Commonwealth, DEQ is allowing these companies to provide notification of VSQG consolidation at an LQG by county or groups of counties. Please note, this allowance is for

utility, and railroad companies generating VSQG amounts of waste at unmanned, remote points of generation ONLY. Should a utility or railroad generate hazardous waste at a permanent, manned location, the regular notification requirements of [40 CFR 262.18](#) would apply.

For VSQG notification by county or groups of counties, the generating company would have to identify a permanent manned location in Virginia that will act as the LQG that is going to receive the VSQG-consolidated waste. The company will have to identify which Virginia counties have the possibility to send hazardous waste generated at remote sites to that permanent, manned LQG location. The permanent LQG location would have to continue to comply with all applicable LQG requirements, including the requirement for aisle space in their central accumulation area(s), weekly inspections, logs of receipt of waste from off-site, and removal of all hazardous waste from the site within 90 days. The full requirements for VSQGs that wish to consolidate can be found at [40 CFR 262.14\(a\)\(5\)\(viii\)](#) and for LQGs at [40 CFR 262.17\(f\)](#).

For wastes generated at VSQG locations in Virginia, and sent to LQG facilities under the same person also in Virginia for which the utility has notified, the utility or railroad does not have to create a VSQG location for each point along the utility or railroad where wastes are generated. These generation sites should be identified by county.

For wastes generated at VSQG locations outside of Virginia but sent to LQGs in Virginia, or generated in Virginia but sent to LQG locations outside of Virginia, the VSQG and LQG would need to comply with all applicable regulations for every state that is involved.

If the LQG that receives waste from the VSQG is in another state, that state's regulations and interpretation of this requirement must be met. *However, the VSQG must still meet the requirements of 40 CFR 262.14(a)(5) as modified by 9 VAC 20-60-262.B.12.*

On [EPA Form 8700-12](#), when an LQG that is a utility company or railroad notifies of the intent to receive VSQG waste from off-site from a remote site under the control of the same person, the company should indicate "Yes" on [EPA Form 8700-12](#) in Box 14 for "LQG Consolidation of VSQG Hazardous Waste", and then complete the Addendum for LQG Consolidation of VSQG hazardous waste. On the Addendum, in each location where a VSQG is to be identified, the LQG should put a separate county name which could be sending remotely-generated hazardous waste to the LQG. EPA Form 8700-12 can be submitted using [MyRCRAID](#) or by sending to Kimberlyn.hughes@deq.virginia.gov.

For recordkeeping and biennial reporting, the contact information would be that of the utility that generates the hazardous waste, and the location would be the county name where it was generated.

6. Additional Information can be found at the following:

[EPA Form 8700-12 Notification Requirements](#)

[EPA Form 8700-12 and Instructions](#)

[Very Small Quantity Generator Requirements](#)

[Small Quantity Generator Requirements](#)

[Large Quantity Generator Requirements](#)