REGFORM
REGULATORY ENVIRONMENTAL GROUP FOR MISSOURI

December 18, 2015

VIA ELECTRONIC MAIL

U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: Docket ID No. EPA-HQ-RCRA-2012-0121

Subject: Comments on Proposed Hazardous Waste Improvements Rule, EPA-HQ-RCRA-2012-0121

Dear Sir/Madam:

REGFORM, the Regulatory Environmental Group for Missouri, appreciates the opportunity to comment on the Hazardous Waste Improvement rule, EPA-HQ-RCRA-2012-0121. REGFORM is a non-profit association representing manufacturers, electric generating utilities, and higher education institutions in the State of Missouri that are subject to environmental regulations, including the proposed Hazardous Waste Improvements Rule.

Comment #1 – 24-Hour Emergency Coordinator

US EPA proposes that generators who have an Emergency Coordinator on duty 24 hours a day, 7 days a week be permitted to identify that person by title, rather than name, in the Contingency Plan.

If this provision were in effect now, first responders and LEPC personnel could call the generator's facility and ask for the Emergency Coordinator rather than going down a list of names in the Contingency Plan until the one on duty is located.

We support this proposal and ask that US EPA promulgate this provision.

Generators undertake significant effort every year to continuously maintain and update their contingency plans. Inadvertently failing to replace a name with a new hire traps the generator in a very common violation.

The proposed solution allows emergency personnel to readily communicate with facility based emergency coordinators, while avoiding paperwork violations for a failure to update. Updates for personnel names simply would not be required.

Comment #2 - Suggested Changes to 24-Hour Emergency Coordinator Requirements at Permitted TSDFs

REGFORM suggests that the US EPA make the same changes to §264.52 and §265.52 that are proposed to §262.265 for the same reasons given for the proposed changes to §262.265. The change would have the added benefit of reducing administrative burden to TSDFs and regulators associated with Class 1 permit modifications triggered when the name of one of the numerous persons fulfilling a "shift leader" position no longer performs this function.

Comment #3 - Proposed 50 Foot Set Back Provisions

The proposed rule requires LQGs to obtain a written waiver from the local fire department in order to allow ignitable or reactive wastes within 50 feet of the property boundary.

In Missouri we have regulations that allow generators to store reactive and ignitable wastes indoors within 50 feet of the property boundary if the building is equipped with automated fire suppression systems (in accordance with NFPA standards) and approved by a qualified, registered Professional Engineer. The generator must also meet other requirements listed in Missouri's 10 CSR 25-7.264(2)(I).

We believe the US EPA proposal presumes that local fire officials have staff who are knowledgeable of NFPA design standards for these structures. This is unlikely due to the many small volunteer first responder organizations throughout much of rural America.

The Missouri rule is admittedly more prescriptive, but more likely to prevent off-site damage than a written waiver issued by persons of unknown qualification.

We suggest that US EPA adopt requirements similar to those in place in Missouri.

Comment #4 - New Recordkeeping Requirement that all Hazardous Waste Determinations be Documented (40 CFR §262.11(e))

REGFORM objects to the proposed recordkeeping requirement that SQGs and LQGs retain documentation of each hazardous waste determination. The proposed regulation includes numerous

prescriptive activities that SQGs and LQGs must perform to generate compliance documentation records for each hazardous waste the facility generates.

The proposed recordkeeping requirements are so onerous that if they are adopted as proposed, US EPA will in essence be requiring all SQGs and LQGs to have a site-specific Waste Analysis Plan (WAP) and that the WAP will need to be written following US EPA's guidance.
SQGs and LQGs will face so much compliance uncertainty meeting the numerous §262.11(e) requirements, that the only way having a chance to defend against a US EPA or state waste determination documentation enforcement action would be to have a robust WAP.

For example, the proposed rule requires SQGs and LQGs to document the "validity" of all sampling and analytical methods used. The preamble at 80 FR 57942/col. 1 states that "validity" means "quality assurance/quality control". The only feasible way a facility could comply with an inspection inquiry regarding a sample's quality control/quality assurance would be to have a WAP that includes a quality assurance/quality control section addressing the of use of duplicate samples, equipment blanks, field blanks, and trip blanks, and associated quality assessments.

REGFORM acknowledges the importance of making accurate hazardous waste determinations, that inaccurate determinations will likely lead to enforcement action against a facility, and that existing regulations already require facilities to maintain certain waste determination records such as laboratory test results. The proposed new recordkeeping regulation, however, is too prescriptive and burdensome. It should not be adopted as proposed. Instead, EPA should solicit input from stakeholders on appropriate waste determination recordkeeping requirements and propose a subsequent rulemaking based on outcomes from that dialog.

Comment # 5 - Documentation of Determination that a Solid Waste Is Not Hazardous Waste (40 CFR §262.11(e))

REGFORM does not support the proposal to require the documentation of determinations that a solid waste is not a hazardous waste. This is highly burdensome for facilities that generate multiple solid wastes that in most cases are not hazardous wastes.

For example, research and development (R&D) facilities constantly reformulate prototype products for development into marketable products. They generate many slightly different solid wastes within a typical week or month. Personnel involved in the formulation of these prototypes have a good understanding of whether the wastes associated with each formulation are potentially hazardous wastes, based on the ingredient mix used.

Most of the formulations for a specific product use ingredients that are within the same family of chemicals, with slightly different percentages or with only one or two different ingredients. If the waste from one formulation of a prototype product is not a hazardous waste, it is likely that the wastes from subsequent formulations of that prototype product are also not hazardous wastes. As proposed, the rule would require documentation for the wastes from each of those different formulations.

Comment # 6 - Proposed New Container Labeling Requirements

REGFORM opposes the proposal to require multiple markings/labels on SQG and LQG containers. Under 40 CFR §262.16(b)(6) for SQGs and 40 CFR §262.17(a)(5) for LQGs, generators would be required to label containers with all of these:

1. the words "Hazardous Waste,"
2. words that identify the contents of the containers, such as the name of the chemicals or the proper shipping name under DOT regulations, and
3. an indication of the hazards of the contents, such as "ignitable"

This is more information than is needed. It is particularly problematic for containers that are so small that the information will not legibly fit. Only the most important information, "Hazardous Waste" should be required.

If US EPA determines that additional markings beyond "Hazardous Waste" are found to be necessary, we request that this be limited to labels that comply with DOT standards for transportation, since transported containers will ultimately require those labels.

Since most hazardous waste generators ship their waste off site for treatment and disposal/recycling, the proposed new labeling requirements may create the negative unintended consequence of SQG/LQG occasionally violating strict DOT labeling and marking regulations.

Non-DOT labels that communicate "other words that identify the contents of the containers" and "an indication of the hazards of the contents" cannot remain on the container if the marking or label which "by its color, design, or shape could be confused with or conflict with a label prescribed by this part." See 49 CFR §172.401.

It is possible a SQG/LQG would place a label on a container and then remove or cover the label before offering the container for transport. But this is labor intensive, since most labels are designed to permanently stick to containers in all kinds of weather conditions. If a generator fails to remove a prohibited label or forgets to cover it up it would violate DOT regulations.

Also, while chemical names and classes of chemicals are meaningful to some with specialized training in chemistry, they provide little additional information (and therefore protection) to first responders or shop personnel who generate the waste. "Hazardous Waste" marking is sufficient.

Comment # 7 - Proposed Requirement to Label Containers with All EPA Waste Codes Prior to Shipping Off-Site (40 CFR §262.32(c))

US EPA proposes to require SQGs and LQGs to mark containers of hazardous waste with all applicable US EPA hazardous waste codes (*e.g.,* D001, F003) before transporting or offering hazardous waste for transportation off site.

We request that US EPA <u>not</u> adopt this proposed change.

The utility of adding an additional container labeling requirement is questioned since the container will have complete DOT labeling and marking and be accompanied by a hazardous waste manifest with at least six US EPA hazardous waste codes identified.

Also, some containers may contain wastes with over 30 different US EPA waste codes (*e.g.*, ash from a hazardous waste incinerator). Adding numerous waste codes to a container would be of limited environmental benefit and benefit only a small number of people who are knowledgeable about hazardous waste regulations. Even those individuals would need to look up each individual code to know its meaning.

Requiring generators to add all applicable waste codes to a container will likely result in numerous DOT labeling/marking regulation violations. This DOT regulations at 49 CFR §172.401 prohibit certain labels/marking on containers.

Comment # 8 - Notification by LQGs Upon Closure of the Hazardous Waste Accumulation Units (40 CFR §262.17(a)(8)(i))

US EPA proposes to require LQGs to notify US EPA or the authorized state no later than 30 days prior to closing any unit that is used to accumulate hazardous waste, and within 90 days after closure of the unit. If promulgated, this requirement would make a significant demand on resources of US EPA or authorized state involved in closure of these LQG units.

The notifications proposed in this rule would generate thousands of notices per year and put additional strain on already scarce US EPA and authorized states' resources.

LQGs at chemical plants routinely use temporary <90-day hazardous waste container accumulation areas for use by contractors during times of major maintenance activities. Examples of maintenance activities that require temporary <90-day areas include, but are not limited to, lead paint abatement, sandblasting of equipment/tanks so that repairs can be made, and applying industrial strength paint.

Project durations vary, but often range from one to three weeks. Assuming 10% of all LQGs use five temporary <90-day areas per year for contractor maintenance work, approximately 7,130 unique closure notices will be submitted to US EPA and authorized states each year by LQGs.

Assuming it requires eight hours of total (both LQG and regulator) effort to close each unit, a likely low estimate, the annual cost of 7,130 notices will be a staggering $5,704,000 per year. This cost was derived by assuming each hour of effort costs $100, again a likely low estimate. For these reasons, we strongly recommend that US EPA not adopt the proposed closure notice regulations. Instead, we suggest that US EPA gather additional data on this matter from entities such as LQGs and authorized states before implementing any new closure notification regulations.

Given the practice described above of LQGs using temporary <90-day container accumulation areas during times of major maintenance activities, LQGs will not be able to consistently give 30-day closure notice simply because these temporary waste areas are commonly operational for a duration shorter than 30 days.

US EPA should not promulgate a regulation that will put LQGs in compliance jeopardy simply because a waste accumulation is needed for less than 30 days.

Closures can be lengthy and time-consuming. Generators are not likely to undertake this costly activity without prior concurrence from US EPA or the appropriate state agency. We doubt that US EPA and

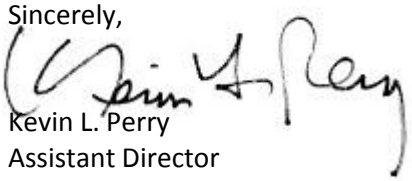
state agencies are adequately prepared and staffed to handle the concurrence requests and reviews that will be required before a generator is comfortable giving closure notice.

We request that US EPA not promulgate this measure, but instead reconsider the basis for such a rule.

Closing

Thank you for considering our comments and requests.

Sincerely,



Kevin L. Perry
Assistant Director

c: R. Walker, REGFORM
REGFORM Members