



National Association of SARA Title III Program Officials

Concerned with the Emergency Planning and Community Right-to-Know Act

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EPA's New Hazardous Waste Generator Improvements Rule Implications for LEPCs, Emergency Planners and Emergency Responders

Introduction:

This new regulation was published in the Federal Register on November 28, 2016 and will become effective May 30, 2017. The regulation contains numerous provisions which impact the management of hazardous waste. It is not the purpose of this guidance to review all those changes. Instead, it will focus on Subpart M - Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators. The regulatory sections of concern are at 40 CFR §§ 262.250 - 262.265. Similar provisions apply to Small Quantity Generators under §262.16(b) (8).¹

Depending upon State hazardous waste regulations, locations as well as other information concerning large quantity generators of hazardous waste may not be known to LEPCs or local emergency planners/responders. It is quite possible that these facilities are not reporting under EPCRA Tier II requirements. This situation is even more likely for small quantity generators.

Under the new regulations, it is not the responsibility of LEPCs or local emergency planners/responders to find these facilities. Instead, those facilities will be coming to you and they will have expectations of the actions you will take under the new regulations.

Discussion:

The discussion below points out some of the key provisions with implications for LEPCs and local planners/responders. Not all of the requirements are mentioned. Where deemed useful the provision is quoted. In cases where the provision is quite long it is paraphrased. Readers are referred to the actual text of the regulation for additional information.

The new requirements include the following:

§262.251 - "A large quantity generator must maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

This requirement is not standards based, so whether a facility is complying will be quite subjective. If a facility has an accident, then in 20-20 hindsight it may be clear that a violation was present.

§262.252 - This is a lengthy provision that requires the generator to have a communications/alarm system, some device with which to summon outside assistance from public authorities, fire extinguishers or fire control equipment, spill control equipment, decontamination equipment, and water or foam

¹ Readers are also advised to check the regulations of your State as states implementing RCRA may already have requirements regarding emergency preparedness in place.

systems. The regulation gives the generator the right to decide whether any of this is necessary and where it might be located.

We have paraphrased this requirement because of its length. Again, this is a very subjective set of requirements not defined by nor bound to any specific set of recognized standards or criteria. The regulation does not provide any sort of local control or influence over the generator's choices - apparently, the generator is free to ignore the views of the LEPC and local planners/responders. Likewise, it's extremely difficult to determine what criteria EPA might use when enforcing this provision.

§262.256 - “(a) The large quantity generator must attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(1) A large quantity generator attempting to make arrangements with its local fire department must determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals. [Emphasis added]

(2) As part of this coordination, the large quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of the hazardous waste handled at the facility and associated hazards, places where personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(3) Where more than one police or fire department might respond to an emergency, the large quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.” [Emphasis added]

We have quoted portions of this requirement because it is very significant. First, the generator is only required to “attempt” to make arrangements. There is no obligation that this attempt be in good faith nor is there any obligation that the generator be reasonable in its approach to determining whether outside public services will be necessary. Please note the highlighted portions above - it is the generator that makes these determinations not the local agencies.

Most concerning, however, is the provision calling for the generator to attempt to make arrangements on the primary emergency authority and incident command. This provision does not require the generator to accept existing local plans, MOUs or arrangements.

§262.260 - “(a) A large quantity generator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

...

(c) The plan must describe arrangements agreed to with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, local hospitals or, if applicable, the Local Emergency Planning Committee, pursuant to §262.256.”

This section of the regulation does not provide for “approval” of this contingency plan by anyone. Apparently if local agencies or the LEPC believe it’s inadequate, their only remedy is to refuse to enter into “arrangements”. That action carries no regulatory consequences for the generator.

§262.262 - “A copy of the contingency plan and all revisions to the plan must be maintained at the large quantity generator and -

(a) The large quantity generator must submit a copy of the contingency plan and all revisions to all local emergency responders (i.e., police departments, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services). This document may also be submitted to the Local Emergency Planning Committee, as appropriate.

(b) A large quantity generator that first becomes subject to these provisions after [Insert Date 6 Months After the Date Of Publication In The Federal Register] or a large quantity generator that is otherwise amending its contingency plan must at that time submit a quick reference guide of the contingency plan to the local emergency responders identified at § 262.262(a) or, as appropriate, the Local Emergency Planning Committee. The quick reference guide must include the following elements:

- (1) The types/names of hazardous wastes in layman’s terms and the associated hazard associated with each hazardous waste present at any one time (e.g., toxic paint wastes, spent ignitable solvent, corrosive acid);
- (2) The estimated maximum amount of each hazardous waste that may be present at any one time;
- (3) The identification of any hazardous wastes where exposure would require unique or special treatment by medical or hospital staff;
- (4) A map of the facility showing where hazardous wastes are generated, accumulated and treated and routes for accessing these wastes;
- (5) A street map of the facility in relation to surrounding businesses, schools and residential areas to understand how best to get to the facility and also evacuate citizens and workers;
- (6) The locations of water supply (e.g., fire hydrant and its flow rate);
- (7) The identification of on-site notification systems (e.g., a fire alarm that rings off site, smoke alarms); and
- (8) The name of the emergency coordinator(s) and 7/24-hour emergency telephone number(s) or, in the case of a facility where an emergency coordinator is continuously on duty, the emergency telephone number for the emergency coordinator.”

Nominally it’s nice for LEPCs, emergency planners and responders to have a copy of the contingency plan. For many communities, it is likely that the quick reference guides will be the most useful provision contained in the new regulations. The information is tangible and may supply an adequate foundation for pre-planning responses and working with the local community on preparedness efforts. Unfortunately, the provision immediately following contains deep flaws.

§262.265 - (a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

...

(2) Notify appropriate state or local agencies with designated response roles **if their help is needed.** [Emphasis added]

...

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the emergency coordinator must report the findings as follows: [Emphasis added]

(1) If the assessment indicates that evacuation of local areas may be advisable, the emergency coordinator must immediately notify appropriate local authorities. The emergency coordinator must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) The emergency coordinator must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424-8802).

Under these provisions local agencies and LEPCs receive incident notices only when the generator determines help is needed or evacuation might be necessary. In other words, the local agencies and responders are completely dependent upon the subjective view of the generator. If the releases from an incident are reportable under EPCRA or CERCLA, then the generator will be required to report under those statutes, but that is a limited subset of the sort of incidents generators may experience. Arguably these problems could be corrected as part of making “arrangements”; however, there is no requirement that the generator consider or adopt more adequate incident reporting commitment.

Conclusion:

To be clear, these regulations have the potential to provide new and useful information to LEPCs, emergency planners and responders. Unfortunately, the community is dependent upon the good faith of the generator in terms of the actual cooperation, planning and reporting that will occur. LEPCs should continue to practice their normal approach to gaining information and cooperation from facilities by simply asking, inviting generators to meetings to discuss contingency plans etc. Keep in mind that these requirements are new to the generators as well and they will probably be very interested in the advice and involvement of LEPCs and first responders.