

RCRA amendments

New laws which went into effect last month could play havoc with the profit margins of commercial pesticide applicators.

by Art Zimmerman

Amendments to the Resource Conservation and Recovery Act (RCRA) passed by Congress last November promise to have the general effect of tightening this country's hazardous waste management rules.

The amendments will bring many small quantity generators (SQGs) under hazardous waste management rules for the first time.

The EPA estimates an added 175,000 businesses that produce small quantities of hazardous waste will be subject to the new regulations.

The amendments lower the minimum regulated quantity of hazardous waste from 2,200 pounds to 220 pounds a month, but will add only another one-half percent (approximately 800,000 metric tons) to the total being regulated.

EPA study

The EPA conducted a survey of 22 industries considered most likely to have newly-regulated generators, including the "pesticide industry." This category is divided into two groups: "pesticide end users," such as golf course superintendents, and "pesticide applicators," such as lawn care service contractors.

Of the 11,000 possible SQGs, about 2,000 generate between 220 and 2,200 pounds a month (from half of a 55-gallon drum to five 55-gallon drums), making them subject to the new hazardous waste regulation.

All those who generate between 220 and 2,200 pounds of hazardous waste per month have begun to use the Uniform National Manifest when shipping hazardous waste off-site. The amendments further mandated that SQG hazardous waste not managed at a full hazardous waste disposal site (a Subtitle C facility), must only be disposed of at a state-approved municipal or industry facility.

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By March 31, 1986, the EPA must decree final rules for handling hazardous waste generated in the SQG category.

Some states have been approved by the EPA to administer portions of the hazardous waste management program, but some state requirements may be stricter than federal requirements. Because of this, businesses believing they will be affected by the new regulation should contact their individual state environmental protection agencies.

Statutory requirement

The new RCRA amendments also mandate that on-site storage of hazardous wastes may occur for 180 days (maximum) without a permit (though there are provisions for extensions to

270 days).

During the interim period, SQGs will not be required to fill out all the information on the Uniform National Manifest form, nor complete the entire paper trail from originator to final disposition and back to original generator now required of large scale generators.

The information that must be provided on the manifest form includes the name and address of the generator, the U.S. Department of Transportation description of the waste, the number and type of containers, the quantity of the waste, and name and address of the facility to which the waste is being shipped, according to Barry Stoll, the EPA's assessment program manager for SQGs in the Office of Solid Waste.

Small quantity generators must be wary of waste disposal sites

If you come under the new definition of a small quantity generator (SQG), there are additional complications with RCRA amendments you must be aware of.

"A lot of people forget that even if you comply with all the requirements of RCRA and you send your waste to a site which later has a problem under CERLA (Comprehensive Environmental Response and Liability Act—also known as the Superfund act), you're in trouble," says Jeff Barnes, a partner in the Cleveland (Ohio) law firm of Squire, Sanders and Dempsey, which has a significant environmental law department.

"CERLA says if a company generates a hazardous substance, it doesn't have to be a waste," Barnes says, "and that's a very long list which incorporates by reference

the lists that appear in the Clean Water Act and RCRA. That company is responsible for it wherever it ends up.

"So, if your waste ends up in a site which later has to be cleaned up, you may be responsible for the cost not only of cleaning your own waste but 'jointly' for somebody else's wastes in the same dump," he says.

Tony Sasson, the Ohio EPA's small quantity generator expert, agrees. "We just fined a small generator \$7,000 because he gave his material to someone who was just 'passing through,'" Sasson says. "It turned out the transporter took it and just left it beside the road somewhere. We were able to trace it back to the original generator who was held responsible for that." □



Hazardous waste sites like this is what Congress hopes to end with the new RCRA amendments.

"All we're doing is letting the statutory requirement go into effect; we're not trying to impose anything further at this point," says Stoll. "The partial use of the Uniform National Manifest at this point is essentially to serve notice or as a label to inform people handling the material of what is in the shipment."

As the web of information is developed, it is wise (even for small waste generators) to check on their transporters and, if possible, to make an on-site visit to their disposal facilities to be certain things are being handled correctly.

If there is any question about what materials can and cannot be put down local sanitary sewers, it is best to check with the local waste water treatment authority. Some industrial wastes can be accommodated at the local treatment facility, others cannot. The terms and conditions of industrial wastes in sewer streams are controlled under the Clean Water Act.

Probably the first question any

small quantity generator should ask is whether his particular wastes are classified as hazardous. More than 400 chemicals and compounds are listed as hazardous under RCRA, and those lists are being added to constantly. The list appears once a year in the *Code of Federal Regulations* (at 40 CFR Part 260.30). Additions made during the year are printed in the *Federal Register*, as the definition of "hazardous waste" is a moving target.

For the most up-to-date information on listed materials, questions can be addressed to EPA's toll-free hot line, (800) 424-9346. Small quantity generators can also call EPA's Small Business Hotline, (800) 368-5888.

The EPA has a mandate from Congress to go through the full proposal, comment period, and revision cycle before issuing permanent regulations. Also, the EPA is required to undertake an educational/assistance program, working with trade associations and small business organizations, to inform and educate, members.

SQGs should make sure their organizations contact the state, regional, and federal EPA's and establish lines of communication.

Other portions of the 1984 amendments which may affect applicators as well:

- The Leaking Underground Storage Tanks (LUST) program mandates regulation of underground storage of products and wastes for the first time. No new underground tanks may be installed after May 7, 1985, unless they meet new standards.

- There is also a massive underground tank registration program, to be issued by November, 1985, and implemented by May, 1986.

- Probably the most important provisions are those banning or restricting the disposal of hazardous wastes in landfills. These include a "hammer" provision, which says unless the federal EPA positively concludes that disposal of certain wastes is safe in landfills, the disposal becomes prohibited.

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