TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0101 GENERAL

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

   a. Proposed Temporary Rule submitted to OAH: 3/10/2017

   b. Proposed Temporary Rule published on the OAH website: 3/17/2017

   c. Public Hearing date: 4/3/2017

   d. Comment Period: 3/10/2017 through 4/7/2017

   e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2017

   f. Adoption by agency on: 5/11/2017

   g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

   h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

   ☐ A serious and unforeseen threat to the public health, safety or welfare.
   ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
   Cite:
   Effective date:
   ☐ A recent change in federal or state budgetary policy.
   Effective date of change:
   ☒ A recent federal regulation.
   Cite: Federal Register Vol. 81 No. 228, 85732 "Hazardous Waste Generator Improvements Rules"
   Effective date: 5/30/2017
   ☐ A recent court order.
   Cite order:
   ☐ State Medical Facilities Plan.
   ☐ Other:

Explain: See Attachments

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?
See Attachment

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ **Yes**
Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ **No**

9. Rule-making Coordinator: Jennifer Everett

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E-Mail: Jennifer.Everett@ncdenr.gov

Agency contact, if any: Jenny Patterson

Phone: 336-767-0031

E-Mail: Jenny.Patterson@ncdenr.gov

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**
Typed Name: J. D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

☐ Date returned to agency:

Submitted for RRC Review:

Attachment for Block 6 of Form 500

Explain:

The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0101 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0101 by replacing references to requirements to technical changes in 40 CFR 260.3 and 260.11(d)(1), and update the section heading in 40 CFR 260.11 which would otherwise automatically become effective with the federal rule on May 30, 2017. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

Attachment for Block 7 of Form 500

Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's Hazardous Waste Program was approved by the United States Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 6926 to be implemented in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

Federal regulation changes contained in the Hazardous Waste Generator Improvements Rule (81 Federal Register 85732, November 28, 2016) promulgated on November 28, 2016, become effective May 30, 2017. The revised federal regulation removes references to provisions that are integral to the North Carolina Hazardous Waste Management Program. The Environmental Management Commission acknowledges and understands that it will need to undertake rulemaking to amend its rules to be consistent with the federal RCRA program, but following the permanent rulemaking process would necessarily result in a gap in the effectiveness of certain rules adopted by reference where those rules have been renumbered, recodified, or otherwise amended, in the Code of Federal Regulations. Consequently, rules critical to the program and necessary for consistency with the federal RCRA program would not be in effect for a period of nine months or more. The temporary rulemaking process provides an opportunity to keep rules critical to the program (which would otherwise be lost due to the renumbering and recodification under the federal regulation amendment) by condensing the hearing and comment period that would otherwise be required.

The Environmental Management Commission will have to incorporate into its rules the provisions of the Hazardous Waste Generator Improvements Rule and will proceed to the permanent rulemaking, meeting the timeline required to maintain EPA's state authorization requirements. The temporary action is necessary to maintain the integrity of the Hazardous Waste Management Program Rules until permanent rulemaking can be completed. It is in the public interest that the Hazardous Waste Management Program not experience a gap in continuity or enforceability of its rules. Utilization of the temporary rulemaking process will ensure that continuity and integrity of the program is preserved. The rule is submitted to the Rules Review Commission within the 210-day period set forth in N.C.G.S. § 150B-21.1.

Over 7,000 hazardous waste generators will be affected by the changes from the Hazardous Waste Generator Improvements Rule. Also, directly affected by the changes are the Department of Environmental Quality, Division of Waste Management (DWM), Solid Waste Section as well as the DWM, Superfund Section, Special Remediation Branch, Dry Cleaning Solvent Cleanup Act (DSCA) Compliance Unit. The Solid Waste Section rules reference definitions and terminologies

from the hazardous waste regulations. The DSCA Compliance Unit administers a compliance inspection and enforcement program to ensure active dry-cleaning facilities and wholesale distribution facilities are compliant with the applicable hazardous waste regulations of 40 CFR Part 260 through 262. The temporary action allows more time for stakeholder input and training.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The information presented in this preamble is organized as follows:

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVI.A, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.*, consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting ("conditions for exemption") and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename "Conditionally exempt small quantity generators" as "Very small quantity generators." A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement ("independent requirements"). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes "generator knowledge" to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.*, acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.*, conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

XV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA-related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[104] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

[104] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). These changes are promulgated under non-HSWA authority.

Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This

15A NCAC 13A .0101 is amended under temporary procedure as follows:

15A NCAC 13A .0101 GENERAL

(a) The Hazardous Waste Section of the Division of Waste Management shall administer the hazardous waste management program for the State of North Carolina.

(b) In applying the federal requirements incorporated by reference throughout this Subchapter, the following substitutions or exceptions shall apply:

When used in any of the federal regulations incorporated by reference throughout this Subchapter, except where the context requires references to remain without substitution (including with regard to forms, publications and regulations concerning international shipments, variances from land disposal restrictions and other program areas over which the federal government retains sole authority): "United States" shall mean the State of North Carolina; "Environmental Protection Agency," "EPA" and "Agency" shall mean the Department of Environmental Quality; and "Administrator," "Regional Administrator," "Assistant Administrator" and "Director" shall mean the Secretary of the Department of Environmental Quality. The North Carolina Solid Waste Management Act and other applicable North Carolina General Statutes set forth in G.S. 130A shall be substituted for references to "the Solid Waste Disposal Act," "the Resource Conservation and Recovery Act" and "RCRA" where required by context.

(c) In the event that there are inconsistencies or duplications in the requirements of those Federal rules incorporated by reference throughout this Subchapter and the State rules set out in this Subchapter, the provisions incorporated by reference shall prevail except where the State rules are more stringent.

(d) 40 CFR 260.1 through 260.3 (Subpart A), "General," are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 260.3 (51 FR 40636, Nov. 7, 1986) is incorporated by reference.

(e) 40 CFR 260.11, "References," is incorporated by reference including subsequent amendments and ~~editions.~~editions, except that the section heading for 40 CFR 260.11 and 40 CFR 260.11(d)(1) (77 FR 29834, May 18, 2012) are incorporated by reference.

(f) Copies of all materials in this Subchapter may be inspected or obtained as follows:

(1) Persons interested in receiving rule-making notices concerning the North Carolina Hazardous Waste Management Rules shall submit a written request to the Hazardous Waste Section, 1646 Mail Service Center, Raleigh, N.C. 27699-1646. Upon receipt of each request, individuals shall be placed on a mailing list to receive notices.

(2) Material incorporated by reference in the Federal Register may be obtained from the U. S. Government Bookstore's website at https://bookstore.gpo.gov/products/sku/769-004-00000-9?ctid= for a cost of nine hundred twenty nine dollars ($929.00) and at http://www.epa.gov/laws-regulations/regulations, free of charge.

(3) The North Carolina Hazardous Waste Management Rules may be obtained from the Hazardous Waste Section at the cost to the Section.

(4) All material is available for inspection at the Department of Environmental Quality, Hazardous Waste Section, 217 West Jones Street, Raleigh, NC and at http://deq.nc.gov/about/divisions/waste-management/waste-management-rules/hazardous-waste-rules.

History Note: *Authority G.S. 130A-294(c); 150B-21.6;*
Eff. September 1, 1979;
Amended Eff. June 1, 1989; June 1, 1988; August 1, 1987; May 1, 1987;
Transferred and Recodified from 10 NCAC 10F .0001 Eff. April 4, 1990;
Amended Eff. October 1, 1993; April 1, 1993; October 1, 1992; December 1, 1991;
Recodified from 15A NCAC 13A .0001 Eff. December 20, 1996;
Amended Eff. July 1, 2016; August 1, 2004; August 1, 2000; August 1, 1998; August 1, ~~1997.~~1997;
Temporary Amendment Eff. May 30, 2017.

TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0102 DEFINITIONS

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

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   c. Public Hearing date: 4/3/2017

   d. Comment Period: 3/10/2017 through 4/7/2017

   e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2017

   f. Adoption by agency on: 5/11/2017

   g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

   h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

   ☐ A serious and unforeseen threat to the public health, safety or welfare.
   ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
   Cite:
   Effective date:
   ☐ A recent change in federal or state budgetary policy.
   Effective date of change:
   ☒ A recent federal regulation.
   Cite: Federal Register Vol. 81 No. 228, 85732 "Hazardous Waste Generator Improvements Rules"
   Effective date: 5/30/2017
   ☐ A recent court order.
   Cite order:
   ☐ State Medical Facilities Plan.
   ☐ Other:

Explain: See Attachments

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?
See Attachment

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ **Yes**
Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ **No**

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

E-Mail: Jennifer.Everett@ncdenr.gov

Agency contact, if any: Jenny Patterson

Phone: 336-767-0031

E-Mail: Jenny.Patterson@ncdenr.gov

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**
Typed Name: J. D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:	Submitted for RRC Review:
☐ Date returned to agency:	

Attachment for Block 6 of Form 500

Explain:

The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0102 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0102 by replacing references to new definitions for "Central accumulation area", "Large quantity generator", "Non-acute hazardous waste", "Small quantity generator", and "Very small quantity generator" in 40 CFR 260.10 which would otherwise automatically become effective with the federal rule on May 30, 2017. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

Attachment for Block 7 of Form 500

Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's Hazardous Waste Program was approved by the United States Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 6926 to be implemented in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

Federal regulation changes contained in the Hazardous Waste Generator Improvements Rule (81 Federal Register 85732, November 28, 2016) promulgated on November 28, 2016, become effective May 30, 2017. The revised federal regulation removes references to provisions that are integral to the North Carolina Hazardous Waste Management Program. The Environmental Management Commission acknowledges and understands that it will need to undertake rulemaking to amend its rules to be consistent with the federal RCRA program, but following the permanent rulemaking process would necessarily result in a gap in the effectiveness of certain rules adopted by reference where those rules have been renumbered, recodified, or otherwise amended, in the Code of Federal Regulations. Consequently, rules critical to the program and necessary for consistency with the federal RCRA program would not be in effect for a period of nine months or more. The temporary rulemaking process provides an opportunity to keep rules critical to the program (which would otherwise be lost due to the renumbering and recodification under the federal regulation amendment) by condensing the hearing and comment period that would otherwise be required.

The Environmental Management Commission will have to incorporate into its rules the provisions of the Hazardous Waste Generator Improvements Rule and will proceed to the permanent rulemaking, meeting the timeline required to maintain EPA's state authorization requirements. The temporary action is necessary to maintain the integrity of the Hazardous Waste Management Program Rules until permanent rulemaking can be completed. It is in the public interest that the Hazardous Waste Management Program not experience a gap in continuity or enforceability of its rules. Utilization of the temporary rulemaking process will ensure that continuity and integrity of the program is preserved. The rule is submitted to the Rules Review Commission within the 210-day period set forth in N.C.G.S. § 150B-21.1.

Over 7,000 hazardous waste generators will be affected by the changes from the Hazardous Waste Generator Improvements Rule. Also, directly affected by the changes are the Department of Environmental Quality, Division of Waste Management (DWM), Solid Waste Section as well as the DWM, Superfund Section, Special Remediation Branch, Dry Cleaning Solvent Cleanup Act (DSCA) Compliance Unit. The Solid Waste Section rules reference definitions and terminologies

from the hazardous waste regulations. The DSCA Compliance Unit administers a compliance inspection and enforcement program to ensure active dry-cleaning facilities and wholesale distribution facilities are compliant with the applicable hazardous waste regulations of 40 CFR Part 260 through 262. The temporary action allows more time for stakeholder input and training.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The information presented in this preamble is organized as follows:

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVI.A, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.*, consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting ("conditions for exemption") and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename "Conditionally exempt small quantity generators" as "Very small quantity generators." A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement ("independent requirements"). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes "generator knowledge" to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.*, acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.*, conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

XV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA-related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[104] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

[104] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). These changes are promulgated under non-HSWA authority.

Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This

15A NCAC 13A .0102 is amended under temporary procedure as follows:

15A NCAC 13A .0102 DEFINITIONS

(a) The definitions contained in G.S. 130A-290 apply to this Subchapter.

(b) 40 CFR 260.10 (Subpart B), "Definitions," (81 FR 85713, Nov. 28, 2016) is incorporated by reference, ~~including subsequent amendments and editions~~ except that the definitions for "Disposal," "Landfill," "Management or hazardous waste management," "Person," "Sludge," "Storage," and "Treatment" are defined by G.S. 130A-290 and are not incorporated by reference and the definition in 260.10 for "Contained" is not incorporated by reference.

(c) The following definition shall be substituted for "Contained": "Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

(1) the unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials or hazardous constituents originating from the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. "Unpermitted releases" means releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit failures;

(2) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and

(3) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(4) hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

(d) The following additional definitions shall apply throughout this Subchapter:

(1) "Section" means the Hazardous Waste Section, in the Division of Waste Management, Department of Environmental Quality.

(2) The "Department" means the Department of Environmental Quality (DEQ).

(3) "Division" means the Division of Waste Management (DWM).

(4) "Long Term Storage" means the containment of hazardous waste for an indefinite period of time in a facility designed to be closed with the hazardous waste in place.

(5) "Off-site Recycling Facility" means any facility that receives shipments of hazardous waste from off-site to be recycled or processed for recycling through any process conducted at the facility, but does not include any facility owned or operated by a generator of hazardous waste solely to recycle their own waste.

History Note: *Authority G.S. 130A 294(c); 150B-21.6;*
Eff. September 1, 1979;
Amended Eff. June 1, 1989; June 1, 1988; February 1, 1987; October 1, 1986;
Transferred and Recodified from 10 NCAC 10F .0002 Eff. April 4, 1990;
Amended Eff. April 1, 1993; October 1, 1990; August 1, 1990;
Recodified from 15A NCAC 13A .0002 Eff. December 20, 1996;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. January 1, 2009;
Amended Eff. July 1, 2010;
Temporary Amendment Eff. December 1, 2015;
Amended Eff. July 1, ~~2016~~ .2016;
Temporary Amendment Eff. May 30, 2017.

TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES – PART 261

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

   a. Proposed Temporary Rule submitted to OAH: 3/10/2017

   b. Proposed Temporary Rule published on the OAH website: 3/17/2017

   c. Public Hearing date: 4/3/2017

   d. Comment Period: 3/10/2017 through 4/7/2017

   e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2017

   f. Adoption by agency on: 5/11/2017

   g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

   h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

   ☐ A serious and unforeseen threat to the public health, safety or welfare.
   ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
   Cite:
   Effective date:
   ☐ A recent change in federal or state budgetary policy.
   Effective date of change:
   ☒ A recent federal regulation.
   Cite: Federal Register Vol. 81 No. 228, 85732 "Hazardous Waste Generator Improvements Rules"
   Effective date: 5/30/2017
   ☐ A recent court order.
   Cite order:
   ☐ State Medical Facilities Plan.
   ☐ Other:

Explain: See Attachments

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?
See Attachment

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ **Yes**
Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ **No**

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

E-Mail: Jennifer.Everett@ncdenr.gov

Agency contact, if any: Jenny Patterson

Phone: 336-767-0031

E-Mail: Jenny.Patterson@ncdenr.gov

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**
Typed Name: J. D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

☐ Date returned to agency:

Submitted for RRC Review:

Attachment for Block 6 of Form 500

Explain:

The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0106 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0106 by replacing references to requirements which would otherwise automatically become effective with the federal rule on May 30, 2017 including: changing terminology used within this rule from conditionally exempt small quantity generator (CESQG) to very small generator (VSQG) in 40 CFR 261.1(a)(1) and (c)(6), and 261.33(e) and (f); removing the existing CESQG regulations in 40 CFR 261.5, making technical changes in 40 CFR 261.4(a)(7); instructing recycling facilities to submit a biennial report according to 40 CFR 261.6(c)(2)(iv); and adding personnel training requirements for facilities generating hazardous secondary materials in 40 CFR 261.420(g). The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

Attachment for Block 7 of Form 500

Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's Hazardous Waste Program was approved by the United States Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 6926 to be implemented in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

Federal regulation changes contained in the Hazardous Waste Generator Improvements Rule (81 Federal Register 85732, November 28, 2016) promulgated on November 28, 2016, become effective May 30, 2017. The revised federal regulation removes references to provisions that are integral to the North Carolina Hazardous Waste Management Program. The Environmental Management Commission acknowledges and understands that it will need to undertake rulemaking to amend its rules to be consistent with the federal RCRA program, but following the permanent rulemaking process would necessarily result in a gap in the effectiveness of certain rules adopted by reference where those rules have been renumbered, recodified, or otherwise amended, in the Code of Federal Regulations. Consequently, rules critical to the program and necessary for consistency with the federal RCRA program would not be in effect for a period of nine months or more. The temporary rulemaking process provides an opportunity to keep rules critical to the program (which would otherwise be lost due to the renumbering and recodification under the federal regulation amendment) by condensing the hearing and comment period that would otherwise be required.

The Environmental Management Commission will have to incorporate into its rules the provisions of the Hazardous Waste Generator Improvements Rule and will proceed to the permanent rulemaking, meeting the timeline required to maintain EPA's state authorization requirements. The temporary action is necessary to maintain the integrity of the Hazardous Waste Management Program Rules until permanent rulemaking can be completed. It is in the public interest that the Hazardous Waste Management Program not experience a gap in continuity or enforceability of its rules. Utilization of the temporary rulemaking process will ensure that continuity and integrity of the program is preserved. The rule is submitted to the Rules Review Commission within the 210-day period set forth in N.C.G.S. § 150B-21.1.

Over 7,000 hazardous waste generators will be affected by the changes from the Hazardous Waste Generator Improvements Rule. Also, directly affected by the changes are the Department of Environmental Quality, Division of Waste Management (DWM), Solid Waste Section as well as the DWM, Superfund Section, Special Remediation Branch, Dry Cleaning Solvent Cleanup Act (DSCA) Compliance Unit. The Solid Waste Section rules reference definitions and terminologies

from the hazardous waste regulations. The DSCA Compliance Unit administers a compliance inspection and enforcement program to ensure active dry-cleaning facilities and wholesale distribution facilities are compliant with the applicable hazardous waste regulations of 40 CFR Part 260 through 262. The temporary action allows more time for stakeholder input and training.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The information presented in this preamble is organized as follows:

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVI.A, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.*, consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting ("conditions for exemption") and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename "Conditionally exempt small quantity generators" as "Very small quantity generators." A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement ("independent requirements"). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes "generator knowledge" to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.*, acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.*, conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

XV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA-related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[104] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

[104] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). These changes are promulgated under non-HSWA authority.

Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13A .0106

DEADLINE FOR RECEIPT: Tuesday, May 16, 2017 at 5:00 p.m.

***PLEASE NOTE:* This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6, should there be a comma after "Mar. 18, 2010)"? Please review.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, May 15, 2017

15A NCAC 13A .0106 is amended under temporary procedure as follows:

15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

(a) 40 CFR 261.1 through 261.9 (Subpart A), "General" are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 261.1(a)(1) (80 FR 1773, Jan. 13, 2015), 261.1(c)(6) (50 FR 663, Jan. 4, 1985), 261.4(a)(7) (81 FR 85713, Nov. 28, 2016), 261.5 (75 FR 13001-13002, Mar. 18, 2010) and 261.6(c)(2)(iv) (81 FR 85713, Nov. 28, 2016) are incorporated by reference.

(b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste" are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 261.30 through 261.37 (Subpart D),"Lists of Hazardous Wastes" are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 261.33(e) and (f) (71 FR 40259, July 14, 2006) are incorporated by reference.

(e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 261.140 through 261.151 (Subpart H), "Financial Requirements for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 261.170 through 261.179 (Subpart I), "Use and Management of Containers" are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 261.190 through 261.200 (Subpart J), "Tank Systems" are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 261.400 through 261.420 (Subpart M), "Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 261.420(g) (80 FR 1782, Jan. 13, 2015) is incorporated by reference.

(j) 40 CFR 261.1030 through 261.1049 (Subpart AA), "Air Emission Standards for Process Vents" are incorporated by reference including subsequent amendments and editions.

(k) 40 CFR 261.1050 through 261.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks" are incorporated by reference including subsequent amendments and editions.

(l) 40 CFR 261.1080 through 261.1090 (Subpart CC), "Air Emission Standards for Tanks and Containers" are incorporated by reference including subsequent amendments and editions.

(m) The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and editions.

History Note: *Authority G.S. 130A-294(c); 150B-21.6;*
Eff. November 19, 1980;
Amended Eff. June 1, 1988; February 1, 1988; December 1, 1987;

August 1, 1987;
Transferred and Recodified from 10 NCAC 10F .0029 Eff. April 4, 1990;
Recodified from 15A NCAC 13A .0007 Eff. August 30, 1990;
Amended Eff. January 1, 1996; April 1, 1993; February 1, 1992;
December 1, 1990;
Recodified from 15A NCAC 13A .0006 Eff. December 20, 1996;
Amended Eff. April 1, 2007; August 1, 2000;
Temporary Amendment Eff. January 1, 2009;
Amended Eff. July 1, 2010;
Temporary Amendment Eff. December 1, 2015;
Amended Eff. July 1, ~~2016.~~2016;
Temporary Amendment Eff. May 30, 2017.

TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0107 STDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE – PART 262

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

   a. Proposed Temporary Rule submitted to OAH: 3/10/2017

   b. Proposed Temporary Rule published on the OAH website: 3/17/2017

   c. Public Hearing date: 4/3/2017

   d. Comment Period: 3/10/2017 through 4/7/2017

   e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2017

   f. Adoption by agency on: 5/11/2017

   g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

   h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

   ☐ A serious and unforeseen threat to the public health, safety or welfare.
   ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
   Cite:
   Effective date:
   ☐ A recent change in federal or state budgetary policy.
   Effective date of change:
   ☒ A recent federal regulation.
   Cite: Federal Register Vol. 81 No. 228, 85732 "Hazardous Waste Generator Improvements Rules"
   Effective date: 5/30/2017
   ☐ A recent court order.
   Cite order:
   ☐ State Medical Facilities Plan.
   ☐ Other:

Explain: See Attachments

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?
See Attachment

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ **Yes**
Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ **No**

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

E-Mail: Jennifer.Everett@ncdenr.gov

Agency contact, if any: Jenny Patterson

Phone: 336-767-0031

E-Mail: Jenny.Patterson@ncdenr.gov

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**
Typed Name: J. D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:	Submitted for RRC Review:
☐ Date returned to agency:	

Attachment for Block 6 of Form 500

Explain:

The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0107 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0107 by replacing references to requirements which would otherwise automatically become effective with the federal rule on May 30, 2017 including: refining the scope of the rules in 40 CFR 262.10; adding additional waste determination requirements in 40 CFR 262.11; removing existing notification requirements in 40 CFR 262.12; updating rule section headings in 40 CFR 262 Subpart B, C, D and the section heading for 40 CFR 262.44; adding additional marking requirements for pre-transportation in 40 CFR 262.32; removing the existing small quantity generator and large quantity generator hazardous waste requirements in 40 CFR 262.34; adding additional reporting requirements in 40 CFR 262.40(c), 262.41, 262.43, and 262.44; and updating the Academic Lab provisions in 40 CFR 262.200 - 262.216. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

Attachment for Block 7 of Form 500

Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's Hazardous Waste Program was approved by the United States Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 6926 to be implemented in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

Federal regulation changes contained in the Hazardous Waste Generator Improvements Rule (81 Federal Register 85732, November 28, 2016) promulgated on November 28, 2016, become effective May 30, 2017. The revised federal regulation removes references to provisions that are integral to the North Carolina Hazardous Waste Management Program. The Environmental Management Commission acknowledges and understands that it will need to undertake rulemaking to amend its rules to be consistent with the federal RCRA program, but following the permanent rulemaking process would necessarily result in a gap in the effectiveness of certain rules adopted by reference where those rules have been renumbered, recodified, or otherwise amended, in the Code of Federal Regulations. Consequently, rules critical to the program and necessary for consistency with the federal RCRA program would not be in effect for a period of nine months or more. The temporary rulemaking process provides an opportunity to keep rules critical to the program (which would otherwise be lost due to the renumbering and recodification under the federal regulation amendment) by condensing the hearing and comment period that would otherwise be required.

The Environmental Management Commission will have to incorporate into its rules the provisions of the Hazardous Waste Generator Improvements Rule and will proceed to the permanent rulemaking, meeting the timeline required to maintain EPA's state authorization requirements. The temporary action is necessary to maintain the integrity of the Hazardous Waste Management Program Rules until permanent rulemaking can be completed. It is in the public interest that the Hazardous Waste Management Program not experience a gap in continuity or enforceability of its rules. Utilization of the temporary rulemaking process will ensure that continuity and integrity of the program is preserved. The rule is submitted to the Rules Review Commission within the 210-day period set forth in N.C.G.S. § 150B-21.1.

Over 7,000 hazardous waste generators will be affected by the changes from the Hazardous Waste Generator Improvements Rule. Also, directly affected by the changes are the Department of Environmental Quality, Division of Waste Management (DWM), Solid Waste Section as well as the DWM, Superfund Section, Special Remediation Branch, Dry Cleaning Solvent Cleanup Act (DSCA) Compliance Unit. The Solid Waste Section rules reference definitions and terminologies

from the hazardous waste regulations. The DSCA Compliance Unit administers a compliance inspection and enforcement program to ensure active dry-cleaning facilities and wholesale distribution facilities are compliant with the applicable hazardous waste regulations of 40 CFR Part 260 through 262. The temporary action allows more time for stakeholder input and training.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The information presented in this preamble is organized as follows:

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVI.A, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.*, consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting ("conditions for exemption") and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename "Conditionally exempt small quantity generators" as "Very small quantity generators." A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement ("independent requirements"). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes "generator knowledge" to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.*, acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.*, conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

XV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA-related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[104] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

[104] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). These changes are promulgated under non-HSWA authority.

Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13A .0107

DEADLINE FOR RECEIPT: Tuesday, May 16, 2017 at 5:00 p.m.

***PLEASE NOTE:* This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 12, should there be a comma after "Mar. 4, 2005)"? Please review.

Line 16, should there be an "and" between "2010), 262.43"? Please review.

Line 31, should there be an "and" between "2010), 262.215? Please review.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, May 15, 2017

15A NCAC 13A .0107 is amended under temporary procedure as follows:

15A NCAC 13A .0107 STDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE - PART 262

(a) 40 CFR 262.10 (81 FR 85715, Nov. 28, 2016), 262.11 (75 FR 13004, Mar. 18, 2010), and ~~through~~ 262.12 (81 FR 85715, Nov. 28, 2016) (Subpart A), "General" are incorporated by ~~reference including subsequent amendments and editions.~~reference.

(b) 40 CFR 262.20 through 262.27 (Subpart B), "The Manifest" are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that the section heading for 40 CFR 262 Subpart B (79 FR 7558, Feb. 7, 2014) is incorporated by reference.

(c) 40 CFR 262.30 through 262.34 (Subpart C), "Pre-Transport Requirements" are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that the section heading for 40 CFR 262 Subpart C (45 FR 33142, May 19, 1980), 40 CFR 262.32 (70 FR 10817, Mar. 4, 2005) and 262.34 (75 FR 13004, Mar. 18, 2010) are incorporated by reference.

(d) 40 CFR 262.40 through 262.44 (Subpart D), "Recordkeeping and Reporting" are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that the section heading for 40 CFR 262 Subpart D and 40 CFR 262.40(c) (48 FR 3981, Jan. 28, 1983), 262.41 (75 FR 13005, Mar. 18, 2010), 262.43, the section heading for 262.44 and 262.44 (52 FR 35899, Sept. 23, 1987) are incorporated by reference. In addition, a generator shall keep records of inspections and results of inspections required by Section 262.34 for at least three years from the date of the inspection.

(e) 40 CFR 262.50 through 262.58 (Subpart E), "Exports of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 262.60 (Subpart F), "Imports of Hazardous Waste" is incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 262.70 (Subpart G), "Farmers" is incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 262.80 through 262.89 (Subpart H), "Transfrontier Shipments of Hazardous Waste for Recovery within the OECD" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 262.89(e) is not incorporated by reference.

(i) 40 CFR 262.200 (75 FR 79308, Dec. 20, 2010), 262.201 through 262.205 (73 FR 72954, Dec. 1, 2008), 262.206 (75 FR 79308, Dec. 20, 2010), 262.207 through 262.211 (73 FR 72954, Dec. 1, 2008), 262.212 (75 FR 79308, Dec. 20, 2010), 262.213 (73 FR 72954, Dec. 1, 2008), 262.214 (75 FR 79308, Dec. 20, 2010), 262.215 and ~~through~~ 262.216 (73 FR 72954, Dec. 1, 2008) (Subpart K), "Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities" ~~is~~ are incorporated by ~~reference including subsequent amendments and editions.~~reference.

(j) The appendix to 40 CFR Part 262 is incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c); 150B-21.6;

Eff. November 19, 1980;
Amended Eff. December 1, 1988; June 1, 1988; August 1, 1987; May 1, 1987;
Transferred and Recodified from 10 NCAC 10F .0030 Eff. April 4, 1990;
Amended Eff. August 1, 1990;
Recodified from 15A NCAC 13A .0008 Eff. August 30, 1990;
Amended Eff. April 1, 1993; October 1, 1990;
Recodified from 15A NCAC 13A .0007 Eff. December 20, 1996;
Amended Eff. July 1, 2016; April 1, 2010; November 1, 2007; January 1, 2007; April 1, 2001; August 1, ~~1998.~~1998;
Temporary Amendment Eff. May 30, 2017.

TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0108 STDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE – PART 263

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

a. Proposed Temporary Rule submitted to OAH: 3/10/2017

b. Proposed Temporary Rule published on the OAH website: 3/17/2017

c. Public Hearing date: 4/3/2017

d. Comment Period: 3/10/2017 through 4/7/2017

e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2017

f. Adoption by agency on: 5/11/2017

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

☐ A serious and unforeseen threat to the public health, safety or welfare.
☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
☐ A recent change in federal or state budgetary policy.
Effective date of change:
☒ A recent federal regulation.
Cite: Federal Register Vol. 81 No. 228, 85732 "Hazardous Waste Generator Improvements Rules"
Effective date: 5/30/2017
☐ A recent court order.
Cite order:
☐ State Medical Facilities Plan.
☐ Other:

Explain: See Attachments

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?
See Attachment

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ **Yes**
Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ **No**

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

E-Mail: Jennifer.Everett@ncdenr.gov

Agency contact, if any: Jenny Patterson

Phone: 336-767-0031

E-Mail: Jenny.Patterson@ncdenr.gov

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**
Typed Name: J. D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

☐ Date returned to agency:

Submitted for RRC Review:

Attachment for Block 6 of Form 500

Explain:

The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0108 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0108 by replacing references to additional requirements for hazardous waste transfer facilities in 40 CFR 263.12 which would otherwise automatically become effective with the federal rule on May 30, 2017. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

Attachment for Block 7 of Form 500

Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's Hazardous Waste Program was approved by the United States Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 6926 to be implemented in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

Federal regulation changes contained in the Hazardous Waste Generator Improvements Rule (81 Federal Register 85732, November 28, 2016) promulgated on November 28, 2016, become effective May 30, 2017. The revised federal regulation removes references to provisions that are integral to the North Carolina Hazardous Waste Management Program. The Environmental Management Commission acknowledges and understands that it will need to undertake rulemaking to amend its rules to be consistent with the federal RCRA program, but following the permanent rulemaking process would necessarily result in a gap in the effectiveness of certain rules adopted by reference where those rules have been renumbered, recodified, or otherwise amended, in the Code of Federal Regulations. Consequently, rules critical to the program and necessary for consistency with the federal RCRA program would not be in effect for a period of nine months or more. The temporary rulemaking process provides an opportunity to keep rules critical to the program (which would otherwise be lost due to the renumbering and recodification under the federal regulation amendment) by condensing the hearing and comment period that would otherwise be required.

The Environmental Management Commission will have to incorporate into its rules the provisions of the Hazardous Waste Generator Improvements Rule and will proceed to the permanent rulemaking, meeting the timeline required to maintain EPA's state authorization requirements. The temporary action is necessary to maintain the integrity of the Hazardous Waste Management Program Rules until permanent rulemaking can be completed. It is in the public interest that the Hazardous Waste Management Program not experience a gap in continuity or enforceability of its rules. Utilization of the temporary rulemaking process will ensure that continuity and integrity of the program is preserved. The rule is submitted to the Rules Review Commission within the 210-day period set forth in N.C.G.S. § 150B-21.1.

Over 7,000 hazardous waste generators will be affected by the changes from the Hazardous Waste Generator Improvements Rule. Also, directly affected by the changes are the Department of Environmental Quality, Division of Waste Management (DWM), Solid Waste Section as well as the DWM, Superfund Section, Special Remediation Branch, Dry Cleaning Solvent Cleanup Act (DSCA) Compliance Unit. The Solid Waste Section rules reference definitions and terminologies

from the hazardous waste regulations. The DSCA Compliance Unit administers a compliance inspection and enforcement program to ensure active dry-cleaning facilities and wholesale distribution facilities are compliant with the applicable hazardous waste regulations of 40 CFR Part 260 through 262. The temporary action allows more time for stakeholder input and training.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The information presented in this preamble is organized as follows:

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVI.A, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.*, consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting ("conditions for exemption") and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename "Conditionally exempt small quantity generators" as "Very small quantity generators." A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement ("independent requirements"). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes "generator knowledge" to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.*, acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.*, conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

XV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA-related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[104] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

[104] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). These changes are promulgated under non-HSWA authority.

Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This

15A NCAC 13A .0108 is amended under temporary procedure as follows:

15A NCAC 13A .0108 STDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE - PART 263

(a) 40 CFR 263.10 through 263.12 (Subpart A), "General" are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 263.12 (75 FR 13005, Mar. 18, 2010) is incorporated by reference.

(b) 40 CFR 263.20 through 263.25 (Subpart B), "Compliance With the Manifest System and Recordkeeping" are incorporated by reference including subsequent amendments and editions.

(c) Upon discovering a significant manifest discrepancy, the transporter shall attempt to reconcile the discrepancy with the waste generator (e.g. with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the transporter on the 16th day shall submit to the Department a letter describing the discrepancy and attempts to reconcile it with a copy of the manifest or shipping paper at issue.

(d) "Manifest discrepancies" means differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a transporter actually transports. Significant discrepancies in quantity shall be as follows: for bulk waste, variations greater than 10 percent in weight; and, for batch waste, any variation in piece count (e.g. a discrepancy of one drum in a truckload). Significant discrepancies in type are obvious differences that may be discovered by inspection or waste analysis (e.g. waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper).

(e) 40 CFR 263.30 through 263.31 (Subpart C), "Hazardous Waste Discharges" are incorporated by reference including subsequent amendments and editions.

History Note: *Authority G.S. 130A-294(c); 150B-21.6;*
Eff. November 19, 1980;
Amended Eff. June 1, 1988; August 1, 1987; May 1, 1987; October 1, 1986;
Transferred and Recodified from 10 NCAC 10F .0031 Eff. April 4, 1990;
Recodified from 15A NCAC 13A .0009 Eff. August 30, 1990;
Amended Eff. April 1, 1993; October 1, 1990;
Recodified from 15A NCAC 13A .0008 Eff. December 20, 1996;
Amended Eff. July 1, 2016; August 1, ~~2000.~~2000;
Temporary Amendment Eff. May 30, 2017.

TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0109 STANDARDS FOR OWNERS/OPERATORS OF HWTSD FACILITIES – PART 264

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

a. Proposed Temporary Rule submitted to OAH: 3/10/2017

b. Proposed Temporary Rule published on the OAH website: 3/17/2017

c. Public Hearing date: 4/3/2017

d. Comment Period: 3/10/2017 through 4/7/2017

e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2017

f. Adoption by agency on: 5/11/2017

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

☐ A serious and unforeseen threat to the public health, safety or welfare.
☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
☐ A recent change in federal or state budgetary policy.
Effective date of change:
☒ A recent federal regulation.
Cite: Federal Register Vol. 81 No. 228, 85732 "Hazardous Waste Generator Improvements Rules"
Effective date: 5/30/2017
☐ A recent court order.
Cite order:
☐ State Medical Facilities Plan.
☐ Other:

Explain: See Attachments

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?
See Attachment

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ **Yes**
Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ **No**

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

E-Mail: Jennifer.Everett@ncdenr.gov

Agency contact, if any: Jenny Patterson

Phone: 336-767-0031

E-Mail: Jenny.Patterson@ncdenr.gov

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**
Typed Name: J. D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:	Submitted for RRC Review:
☐ Date returned to agency:	

Attachment for Block 6 of Form 500

Explain:

The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0109 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0109 by replacing references to requirements which would otherwise automatically become effective with the federal rule on May 30, 2017 including: updating hazardous waste generator rule references (referring to rules that are not yet adopted) in Permitted Facility provisions in 40 CFR 264.1(g)(1) and (g)(3), 264.71(c), 264.1030(b)(2), 264.1050(b)(3); removing references to "Performance Track Member" in 40 CFR 264.15(b)(4), 264.174, 264.195(e), 264.1101(c)(4); removing biennial report instructions in 40 CFR 264.75; and providing technical changes in 40 CFR 264.170 and 264.191(a). The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

Attachment for Block 7 of Form 500

Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's Hazardous Waste Program was approved by the United States Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 6926 to be implemented in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

Federal regulation changes contained in the Hazardous Waste Generator Improvements Rule (81 Federal Register 85732, November 28, 2016) promulgated on November 28, 2016, become effective May 30, 2017. The revised federal regulation removes references to provisions that are integral to the North Carolina Hazardous Waste Management Program. The Environmental Management Commission acknowledges and understands that it will need to undertake rulemaking to amend its rules to be consistent with the federal RCRA program, but following the permanent rulemaking process would necessarily result in a gap in the effectiveness of certain rules adopted by reference where those rules have been renumbered, recodified, or otherwise amended, in the Code of Federal Regulations. Consequently, rules critical to the program and necessary for consistency with the federal RCRA program would not be in effect for a period of nine months or more. The temporary rulemaking process provides an opportunity to keep rules critical to the program (which would otherwise be lost due to the renumbering and recodification under the federal regulation amendment) by condensing the hearing and comment period that would otherwise be required.

The Environmental Management Commission will have to incorporate into its rules the provisions of the Hazardous Waste Generator Improvements Rule and will proceed to the permanent rulemaking, meeting the timeline required to maintain EPA's state authorization requirements. The temporary action is necessary to maintain the integrity of the Hazardous Waste Management Program Rules until permanent rulemaking can be completed. It is in the public interest that the Hazardous Waste Management Program not experience a gap in continuity or enforceability of its rules. Utilization of the temporary rulemaking process will ensure that continuity and integrity of the program is preserved. The rule is submitted to the Rules Review Commission within the 210-day period set forth in N.C.G.S. § 150B-21.1.

Over 7,000 hazardous waste generators will be affected by the changes from the Hazardous Waste Generator Improvements Rule. Also, directly affected by the changes are the Department of Environmental Quality, Division of Waste Management (DWM), Solid Waste Section as well as the DWM, Superfund Section, Special Remediation Branch, Dry Cleaning Solvent Cleanup Act (DSCA) Compliance Unit. The Solid Waste Section rules reference definitions and terminologies

from the hazardous waste regulations. The DSCA Compliance Unit administers a compliance inspection and enforcement program to ensure active dry-cleaning facilities and wholesale distribution facilities are compliant with the applicable hazardous waste regulations of 40 CFR Part 260 through 262. The temporary action allows more time for stakeholder input and training.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The information presented in this preamble is organized as follows:

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVI.A, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.*, consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting ("conditions for exemption") and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename "Conditionally exempt small quantity generators" as "Very small quantity generators." A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement ("independent requirements"). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes "generator knowledge" to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.*, acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.*, conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

XV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA-related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[104] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

[104] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). These changes are promulgated under non-HSWA authority.

Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13A .0109

DEADLINE FOR RECEIPT: Tuesday, May 16, 2017 at 5:00 p.m.

***PLEASE NOTE:* This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

As the prior rules in this packet were recently reviewed and approved by the Rules Review Commission, the use of commas is not consistent among the older rules. Please review the use of commas between the citation title and the language of "are/is incorporated…" The role of the comma after the quotation marks for the title of the CFR seems unnecessary.

Line 28, replace "which were" with "that are"

Lines 30 thru 34, as the referenced date period is over thirty years ago, is this language still applicable and necessary for the Rule? Please review and clarify if necessary.

Line 35, replace "which were" with "that are"

Page 2, line 7, replace "which were" with "that are"

Page 2, line 12, replace "cannot" with "is unable to"

Page 2, lines 30 thru page 3, line 2, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Page 3, line 19, is the use of "and" before and after "historical sites" proper? Please review and delete the unnecessary conjunction

Page 3, line 20, replace "provision" with "provisions"

Page 3, line 20, replace "has" with "have"

Page 3, line 31, delete "but not limited to"

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, May 15, 2017

Page 3, line 32, replace "can demonstrate" with "demonstrates"

Page 4, line 3, add a comma after "facilities"

Page 4, line 4, delete the comma after "impoundments"

Page 4, line 7, add a comma after "storage"

Page 4, line 20, replace "which" with "that"

Page 4, line 25, replace "can demonstrate" with "demonstrates"

Page 5, lines 13 thru 34, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Page 5, line 14, add a comma after "treatment"

Page 5, line 26, define or delete "directly"

Page 5, line 35, add a comma after "facilities"

Page 6, lines 3 thru 14, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Page 6, line 14, add a comma after "cave"

Page 6, lines 17 thru 27, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Page 6, line 34, replace "can demonstrate" with "demonstrates"

Page 8, line 5, what is meant by "applicable laws or rules."? Please clarify

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, May 15, 2017

15A NCAC 13A .0109 is amended under temporary procedure as follows:

15A NCAC 13A .0109 STANDARDS FOR OWNERS/OPERATORS OF HWTSD FACILITIES - PART 264

(a) Any person who treats, stores or disposes of hazardous waste shall comply with the requirements set forth in this Section. The treatment, storage or disposal of hazardous waste is prohibited except as provided in this Section.

(b) 40 CFR 264.1 through 264.4 (Subpart A), "General", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 264.1(g)(1) and 264.1(g)(3) (71 FR 40272, July 14, 2006) are incorporated by reference.

(c) 40 CFR 264.10 through 264.19 (Subpart B), "General Facility Standards", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 264.15(b)(4) (71 FR 16903, Apr. 4, 2006) is incorporated by reference.

(d) 40 CFR 264.30 through 264.37 (Subpart C), "Preparedness and Prevention", are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 264.50 through 264.56 (Subpart D), "Contingency Plan and Emergency Procedures", are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 264.70 through 264.77 (Subpart E), "Manifest System, Recordkeeping, and Reporting", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 264.71(c) (81 FR 85727, Nov. 28, 2016) and 264.75 (51 FR 28556, Aug. 8, 1986) are incorporated by reference.

(g) 40 CFR 264.90 through 264.101 (Subpart F), "Releases From Solid Waste Management Units", are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 264.90(a)(2).

(h) 40 CFR 264.110 through 264.120 (Subpart G), "Closure and Post-Closure", are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 264.140 through 264.151 (Subpart H), "Financial Requirements", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), and 40 CFR 264.151(a)(1), Section 15 are not incorporated by reference.

(1) The following shall be substituted for the provisions of 40 CFR 264.143(a)(3) which were not incorporated by reference:

The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. Within one year of February 1, 1987, an owner or operator using a closure trust fund established prior to February 1, 1987, shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.

(2) The following shall be substituted for the provisions of 40 CFR 264.143(a)(6) which were not incorporated by reference:

After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(3) The following shall be substituted for the provisions of 40 CFR 264.145(a)(3) which were not incorporated by reference:

(A) Except as otherwise provided in Part (i)(3)(B) of this Rule, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

(B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit cannot provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund over the term of the RCRA post-closure permit may be established by the Department as a permit condition.

(4) The following additional requirement shall apply:

The trustee shall notify the Department of payment to the trust fund, by certified mail within 10 days following said payment to the trust fund. The notice shall contain the name of the Grantor, the date of payment, the amount of payment, and the current value of the trust fund.

(j) 40 CFR 264.170 through 264.179 (Subpart I), "Use and Management of Containers", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 264.170 (46 FR 2866, Jan. 12, 1981) and 264.174 (71 FR 16905, Apr. 4, 2006) are incorporated by reference.

(k) 40 CFR 264.190 through 264.200 (Subpart J), "Tank Systems", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 264.191(a) and 264.195(e) (71 FR 16906, Apr. 4, 2006) are incorporated by reference.

(l) The following are requirements for Surface Impoundments:

(1) 40 CFR 264.220 through 264.232 (Subpart K), "Surface Impoundments", are incorporated by reference including subsequent amendments and editions.

(2) The following are additional standards for surface impoundments:

(A) The liner system shall consist of at least two liners;

(B) Artificial liners shall be equal to or greater than 30 mils in thickness;

(C) Clayey liners shall be equal to or greater than five feet in thickness and have a maximum permeability of 1.0×10^{-7} cm/sec;

(D) Clayey liner soils shall have the same characteristics as described in Subparts (r)(4)(B)(ii), (iii), (iv), (vi) and (vii) of this Rule;

(E) A leachate collection system shall be constructed between the upper liner and the bottom liner;

(F) A leachate detection system shall be constructed below the bottom liner; and

(G) Surface impoundments shall be constructed in such a manner to prevent landsliding, slippage or slumping.

(m) 40 CFR 264.250 through 264.259 (Subpart L), "Waste Piles", are incorporated by reference including subsequent amendments and editions.

(n) 40 CFR 264.270 through 264.283 (Subpart M), "Land Treatment", are incorporated by reference including subsequent amendments and editions.

(o) 40 CFR 264.300 through 264.317 (Subpart N), "Landfills", are incorporated by reference including subsequent amendments and editions.

(p) A long-term storage facility shall meet groundwater protection, closure and post-closure, and financial requirements for disposal facilities as specified in Paragraphs (g), (h), and (i) of this Rule.

(q) 40 CFR 264.340 through 264.351 (Subpart O), "Incinerators", are incorporated by reference including subsequent amendments and editions.

(r) The following are additional location standards for facilities:

(1) In addition to the location standards set forth in 15A NCAC 13A .0109(c), the Department, in determining whether to issue a permit for a hazardous waste management facility, shall consider the risks posed by the proximity of the facility to water table levels, flood plains, water supplies, public water supply watersheds, mines, natural resources such as wetlands, endangered species habitats, parks, forests, wilderness areas, and historical sites, and population centers and shall consider whether provision has been made for buffer zones as required by this Rule. The Department shall also consider ground water travel time, soil pH, soil cation exchange capacity, soil composition and permeability, slope, climate, local land use, transportation factors such as proximity to waste generators, route, route safety, and method of transportation, aesthetic factors such as the visibility, appearance, and noise level of the facility; potential impact on air quality, existence of seismic activity and cavernous bedrock. The basis for issuing or denying the permit are found in 40 CFR 264 as adopted by reference in this Rule.

(2) The following minimum separation distances shall be required of all hazardous waste management facilities except that existing facilities shall be required to meet these minimum separation distances to the maximum extent feasible:

(A) All hazardous waste management facilities shall be located at least 0.25 miles from institutions including but not limited to schools, health care facilities and prisons, unless the owner or operator can demonstrate that no risks shall be posed by the proximity of the facility.

(B) All hazardous waste treatment and storage facilities shall comply with the following separation distances: all hazardous waste shall be treated and stored a minimum of 50 feet from the property line of the facility; except that all hazardous waste with ignitable, incompatible or reactive characteristics shall be treated and stored a minimum of 200 feet

from the property line of the facility if the area adjacent to the facility is zoned for any use other than industrial or is not zoned.

(C) All hazardous waste landfills, long-term storage facilities, land treatment facilities and surface impoundments, shall comply with the following separation distances:

(i) All hazardous waste shall be located a minimum of 200 feet from the property line of the facility;

(ii) Each hazardous waste landfill, long-term storage or surface impoundment facility shall be constructed so that the bottom of the facility is 10 feet or more above the historical high ground water level. The historical high ground water level shall be determined by measuring the seasonal high ground water levels and predicting the long-term maximum high ground water level from published data on similar North Carolina topographic positions, elevations, geology, and climate; and

(iii) All hazardous waste shall be located a minimum of 1,000 feet from the zone of influence of any existing off-site ground water well used for drinking water, and outside the zone of influence of any existing or planned on-site drinking water well.

(D) Hazardous waste storage and treatment facilities for liquid waste that is classified as TC toxic, toxic, or acutely toxic and is stored or treated in tanks or containers shall not be located:

(i) in the recharge area of an aquifer which is designated as an existing sole drinking water source as defined in the Safe Drinking Water Act, Section .1424(e) [42 U.S.C. 300h-3(e)] unless an adequate secondary containment system, as described in 40 CFR 264 as adopted by reference in this Rule, is constructed, and after consideration of applicable factors in Subparagraph (r)(3) of this Rule, the owner or operator can demonstrate no risk to public health;

(ii) within 200 feet of surface water impoundments or surface water stream with continuous flow as defined by the United States Geological Survey;

(iii) in an area that will allow direct surface or subsurface discharge to WS-I, WS-II or SA waters or a Class III Reservoir as defined in 15A NCAC 02B .0200 and 15A NCAC 18C .0102;

(iv) in an area that will allow direct surface or subsurface discharge to the watershed for a Class I or II Reservoir as defined in 15A NCAC 18C .0102;

(v) within 200 feet horizontally of a 100-year floodplain elevation;

(vi) within 200 feet of a seismically active area as defined in Paragraph (c) of this Rule; and

(vii) within 200 feet of a mine, cave, or cavernous bedrock.

(3) The Department shall require any hazardous waste management facility to comply with greater separation distances or other protective measures when necessary to avoid risks posed by the proximity of the facility to water table levels, flood plains, water supplies, public water supply watersheds, mines, natural resources such as wetlands, endangered species habitats, parks, forests, wilderness areas, and historical sites, and population centers or to provide a buffer zone as required by this Rule. The Department shall also require protective measures when necessary to avoid unreasonable risks posed by the soil pH, soil cation exchange capacity, soil composition and permeability, climate, transportation factors such as proximity to waste generators, route, route safety, and method of transportation, aesthetic factors such as the visibility, appearance, and noise level of the facility, potential impact on air quality, and the existence of seismic activity and cavernous bedrock. In determining whether to require greater separation distances or other protective measures, the Department shall consider the following factors:

(A) All proposed hazardous waste activities and procedures to be associated with the transfer, storage, treatment or disposal of hazardous waste at the facility;

(B) The type of hazardous waste to be treated, stored, or disposed of at the facility;

(C) The volume of waste to be treated, stored, or disposed of at the facility;

(D) Land use issues including the number of permanent residents in proximity to the facility and their distance from the facility;

(E) The adequacy of facility design and plans for containment and control of sudden and non-sudden accidental events in combination with adequate off-site evacuation of potentially adversely impacted populations;

(F) Other land use issues including the number of institutional and commercial structures such as airports and schools in proximity to the facility, their distance from the facility, and the particular nature of the activities that take place in those structures;

(G) The lateral distance and slope from the facility to surface water supplies or to watersheds draining directly into surface water supplies;

(H) The vertical distance, and type of soils and geologic conditions separating the facility from the water table;

(I) The direction and rate of flow of ground water from the sites and the extent and reliability of on-site and nearby data concerning seasonal and long-term groundwater level fluctuations;

(J) Potential air emissions including rate, direction of movement, dispersion and exposure, whether from planned or accidental, uncontrolled releases; and

(K) Any other relevant factors.

(4) The following are additional location standards for landfills, long-term storage facilities and hazardous waste surface impoundments:

(A) A hazardous waste landfill, long-term storage, or a surface impoundment facility shall not be located:

(i) In the recharge area of an aquifer which is an existing sole drinking water source;

(ii) Within 200 feet of a surface water stream with continuous flow as defined by the United States Geological Survey;

(iii) In an area that will allow direct surface or subsurface discharge to WS-I, WS-II or SA waters or a Class III Reservoir as defined in 15A NCAC 02B .0200 and 15A NCAC 18C .0102;

(iv) In an area that will allow direct surface or subsurface discharge to a watershed for a Class I or II Reservoir as defined in 15A NCAC 18C .0102;

(v) Within 200 feet horizontally of a 100-year flood hazard elevation;

(vi) Within 200 feet of a seismically active area as defined in Paragraph (c) of this Rule; and

(vii) Within 200 feet of a mine, cave or cavernous bedrock.

(B) A hazardous waste landfill or long-term storage facility shall be located in geologic formations with the following soil characteristics:

(i) The depth of the unconsolidated soil materials shall be equal to or greater than 20 feet;

(ii) The percentage of fine-grained soil material shall be equal to or greater than 30 percent passing through a number 200 sieve;

(iii) Soil liquid limit shall be equal to or greater than 30;

(iv) Soil plasticity index shall be equal to or greater than 15;

(v) Soil compacted hydraulic conductivity shall be a maximum of 1.0×10^{-7} cm/sec;

(vi) Soil Cation Exchange Capacity shall be equal to or greater than 5 milliequivalents per 100 grams;

(vii) Soil Potential Volume Change Index shall be equal to or less than 4; and

(viii) Soils shall be underlain by a geologic formation having a rock quality designation equal to or greater than 75 percent.

(C) A hazardous waste landfill or long-term storage facility shall be located in areas of low to moderate relief to the extent necessary to prevent landsliding or slippage and slumping. The site may be graded to comply with this standard.

(5) All new hazardous waste impoundments that close with hazardous waste residues left in place shall comply with the standards for hazardous waste landfills in Subparagraph (r)(4) of this Rule unless the applicant can demonstrate that equivalent protection of public health and environment is afforded by some other standard.

(6) The owners and operators of all new hazardous waste management facilities shall construct and maintain a minimum of two observation wells, one upgradient and one downgradient of the

proposed facility; and shall establish background groundwater concentrations and monitor annually for all hazardous wastes that the owner or operator proposes to store, treat, or dispose at the facility.

(7) The owners and operators of all new hazardous waste facilities shall demonstrate that the community has had an opportunity to participate in the siting process by complying with the following:

(A) The owners and operators shall hold at least one public meeting in the county in which the facility is to be located to inform the community of all hazardous waste management activities including but not limited to: the hazardous properties of the waste to be managed; the type of management proposed for the wastes; the mass and volume of the wastes; and the source of the wastes; and to allow the community to identify specific health, safety and environmental concerns or problems expressed by the community related to the hazardous waste activities associated with the facility. The owners and operators shall provide a public notice of this meeting at least 30 days prior to the meeting. Public notice shall be documented in the facility permit application. The owners and operators shall submit as part of the permit application a complete written transcript of the meeting, all written material submitted that represents community concerns, and all other relevant written material distributed or used at the meeting. The written transcript and other written material submitted or used at the meeting shall be submitted to the local public library closest to and in the county of the proposed site with a request that the information be made available to the public.

(B) For the purposes of this Rule, public notice shall include: notification of the boards of county commissioners of the county where the proposed site is to be located and all contiguous counties in North Carolina; a legal advertisement placed in a newspaper or newspapers serving those counties; and provision of a news release to at least one newspaper, one radio station, and one TV station serving these counties. Public notice shall include the time, place, and purpose of the meetings required by this Rule.

(C) No less than 30 days after the first public meeting transcript is available at the local public library, the owners and operators shall hold at least one additional public meeting in order to attempt to resolve community concerns. The owners and operators shall provide public notice of this meeting at least 30 days prior to the meeting. Public notice shall be documented in the facility permit application. The owners and operators shall submit as part of the permit application a complete written transcript of the meeting, all written material submitted that represents community concerns, and all other relevant written material distributed or used at the meeting.

(D) The application, written transcripts of all public meetings and any additional material submitted or used at the meetings, and any additions or corrections to the application, including any responses to notices of deficiencies shall be submitted to the local library

closest to and in the county of the proposed site, with a request that the information be made available to the public until the permit decision is made.

(E) The Department shall consider unresolved community concerns in the permit review process and impose final permit conditions based on sound scientific, health, safety, and environmental principles as authorized by applicable laws or rules.

(s) 40 CFR 264.550 through 264.555 (Subpart S), "Special Provisions for Cleanup", are incorporated by reference including subsequent amendments and editions.

(t) 40 CFR 264.570 through 264.575 (Subpart W), "Drip Pads", are incorporated by reference including subsequent amendments and editions.

(u) 40 CFR 264.600 through 264.603 (Subpart X), "Miscellaneous Units", are incorporated by reference including subsequent amendments and editions.

(v) 40 CFR 264.1030 through 264.1049 (Subpart AA), "Air Emission Standards for Process Vents", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 264.1030(b)(2) (71 FR 40274, July 14, 2006) is incorporated by reference.

(w) 40 CFR 264.1050 through 264.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 264.1050(b)(3) (71 FR 40274, July 14, 2006) is incorporated by reference.

(x) 40 CFR 264.1080 through 264.1091 (Subpart CC), "Air Emission Standards for Tanks, Surface Impoundments, and Containers", are incorporated by reference including subsequent amendments and editions.

(y) 40 CFR 264.1100 through 264.1102 (Subpart DD), "Containment Buildings", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 264.1101(c)(4) (71 FR 40274, July 14, 2006) is incorporated by reference.

(z) 40 CFR 264.1200 through 264.1202 (Subpart EE), "Hazardous Waste Munitions and Explosives Storage", are incorporated by reference including subsequent amendments and editions.

(aa) Appendices to 40 CFR Part 264 are incorporated by reference including subsequent amendments and editions.

History Note: *Authority G.S. 130A-294(c); 150B-21.6;*
Eff. November 19, 1980;
Amended Eff. November 1, 1989; June 1, 1989; December 1, 1988; February 1, 1988;
Transferred and Recodified from 10 NCAC 10F .0032 Eff. April 4, 1990;
Amended Eff. August 1, 1990;
Recodified from 15A NCAC 13A .0010 Eff. August 30, 1990;
Amended Eff. July 1, 1995; October 1, 1993; April 1, 1993; October 1, 1992;
Recodified from 15A NCAC 13A .0009 Eff. December 20, 1996;
Amended Eff. August 1, 2004; April 1, 2001; April 1, ~~1999.~~1999;
Temporary Amendment Eff. May 30, 2017.

TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0110 INTERIM STATUS STDS FOR OWNERS-OP OF HWTSD FACILITIES – PART 265

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

   a. Proposed Temporary Rule submitted to OAH: 3/10/2017

   b. Proposed Temporary Rule published on the OAH website: 3/17/2017

   c. Public Hearing date: 4/3/2017

   d. Comment Period: 3/10/2017 through 4/7/2017

   e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2017

   f. Adoption by agency on: 5/11/2017

   g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

   h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

   ☐ A serious and unforeseen threat to the public health, safety or welfare.
   ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
   Cite:
   Effective date:
   ☐ A recent change in federal or state budgetary policy.
   Effective date of change:
   ☒ A recent federal regulation.
   Cite: Federal Register Vol. 81 No. 228, 85732 "Hazardous Waste Generator Improvements Rules"
   Effective date: 5/30/2017
   ☐ A recent court order.
   Cite order:
   ☐ State Medical Facilities Plan.
   ☐ Other:

Explain: See Attachments

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?
See Attachment

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ **Yes**
Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ **No**

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

E-Mail: Jennifer.Everett@ncdenr.gov

Agency contact, if any: Jenny Patterson

Phone: 336-767-0031

E-Mail: Jenny.Patterson@ncdenr.gov

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**
Typed Name: J. D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:	Submitted for RRC Review:
☐ Date returned to agency:	

Attachment for Block 6 of Form 500

Explain:

The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0110 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0110 by replacing references to requirements which would otherwise automatically become effective with the federal rule on May 30, 2017 including: updating hazardous waste generator rule references (referring to rules that are not yet adopted) in Interim Status Permitted Facility provisions in 40 CFR 265.1(c)(5) and (c)(7), 265.71(c), 265.1030(b)(2) and (b)(3), 265.1050; removing references to "Performance Track Member" in 40 CFR 265.15(b)(4), 265.174, 265.195, 265.1101(c)(4); removing biennial report instructions in 40 CFR 265.75; and removing small quantity generator tank requirements in 40 CFR 265.201. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

Attachment for Block 7 of Form 500

Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's Hazardous Waste Program was approved by the United States Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 6926 to be implemented in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

Federal regulation changes contained in the Hazardous Waste Generator Improvements Rule (81 Federal Register 85732, November 28, 2016) promulgated on November 28, 2016, become effective May 30, 2017. The revised federal regulation removes references to provisions that are integral to the North Carolina Hazardous Waste Management Program. The Environmental Management Commission acknowledges and understands that it will need to undertake rulemaking to amend its rules to be consistent with the federal RCRA program, but following the permanent rulemaking process would necessarily result in a gap in the effectiveness of certain rules adopted by reference where those rules have been renumbered, recodified, or otherwise amended, in the Code of Federal Regulations. Consequently, rules critical to the program and necessary for consistency with the federal RCRA program would not be in effect for a period of nine months or more. The temporary rulemaking process provides an opportunity to keep rules critical to the program (which would otherwise be lost due to the renumbering and recodification under the federal regulation amendment) by condensing the hearing and comment period that would otherwise be required.

The Environmental Management Commission will have to incorporate into its rules the provisions of the Hazardous Waste Generator Improvements Rule and will proceed to the permanent rulemaking, meeting the timeline required to maintain EPA's state authorization requirements. The temporary action is necessary to maintain the integrity of the Hazardous Waste Management Program Rules until permanent rulemaking can be completed. It is in the public interest that the Hazardous Waste Management Program not experience a gap in continuity or enforceability of its rules. Utilization of the temporary rulemaking process will ensure that continuity and integrity of the program is preserved. The rule is submitted to the Rules Review Commission within the 210-day period set forth in N.C.G.S. § 150B-21.1.

Over 7,000 hazardous waste generators will be affected by the changes from the Hazardous Waste Generator Improvements Rule. Also, directly affected by the changes are the Department of Environmental Quality, Division of Waste Management (DWM), Solid Waste Section as well as the DWM, Superfund Section, Special Remediation Branch, Dry Cleaning Solvent Cleanup Act (DSCA) Compliance Unit. The Solid Waste Section rules reference definitions and terminologies

from the hazardous waste regulations. The DSCA Compliance Unit administers a compliance inspection and enforcement program to ensure active dry-cleaning facilities and wholesale distribution facilities are compliant with the applicable hazardous waste regulations of 40 CFR Part 260 through 262. The temporary action allows more time for stakeholder input and training.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The information presented in this preamble is organized as follows:

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVI.A, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.*, consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting ("conditions for exemption") and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename "Conditionally exempt small quantity generators" as "Very small quantity generators." A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement ("independent requirements"). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes "generator knowledge" to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.*, acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.*, conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

XV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA-related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[104] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

[104] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). These changes are promulgated under non-HSWA authority.

Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13A .0110

DEADLINE FOR RECEIPT: Tuesday, May 16, 2017 at 5:00 p.m.

***PLEASE NOTE:* This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

As the prior rules in this packet were recently reviewed and approved by the Rules Review Commission, the use of commas is not consistent among the older rules. Please review the use of commas between the citation title and the language of "are/is incorporated…" The role of the comma after the quotation marks for the title of the CFR seems unnecessary.

Line 29, replace "which were" with "that are"

Lines 30 thru 34, as the referenced date period is almost thirty-six years ago, is this language still applicable and necessary for the Rule? Please review and clarify if necessary.

Line 35, replace "which were" with "that are"

Page 2, line 6, replace "which were" with "that are"

Page 2, line 11, replace "cannot" with "is unable to"

Page 2, line 14, what is the "Administrative Order"? Is that the document referenced in the CFR as being issued by the "Regional Administrator"? Should the term be capitalized? Please review and clarify if necessary.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, May 15, 2017

15A NCAC 13A .0110 is amended under temporary procedure as follows:

15A NCAC 13A .0110 INTERIM STATUS STDS FOR OWNERS-OP OF HWTSD FACILITIES - PART 265

(a) 40 CFR 265.1 through 265.4 (Subpart A), "General", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 265.1(c)(5) and 265.1(c)(7) (71 FR 40274, July 14, 2006) are incorporated by reference.

(b) 40 CFR 265.10 through 265.19 (Subpart B), "General Facility Standards", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 265.15(b)(4) (71 FR 16908, Apr. 4, 2006) is incorporated by reference.

(c) 40 CFR 265.30 through 265.37 (Subpart C), "Preparedness and Prevention", are incorporated by reference including subsequent amendments and editions, except that 265.35 is not incorporated by reference.

The following shall be substituted for the provisions of 265.35.

Required aisle space: The owner or operator must maintain aisle space of at least two feet to allow the unobstructed movement of personnel, fire prevention equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

(d) 40 CFR 265.50 through 265.56 (Subpart D), "Contingency Plan and Emergency Procedures", are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 265.70 through 265.77 (Subpart E), "Manifest System, Recordkeeping, and Reporting", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 265.71(c) (81 FR 85727, Nov. 28, 2016) and 265.75 (51 FR 28556, Aug. 8, 1986) are incorporated by reference.

(f) 40 CFR 265.90 through 265.94 (Subpart F), "Ground-Water Monitoring", are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 265.110 through 265.121 (Subpart G), "Closure and Post-Closure", are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 265.140 through 265.151 (Subpart H), "Financial Requirements", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 265.143(a)(3), (a)(4), (a)(5), (a)(6), and 40 CFR 265.145(a)(3), (a)(4), (a)(5), are not incorporated by reference.

(1) The following shall be substituted for the provisions of 40 CFR 265.143(a)(3) which were not incorporated by reference: The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. By November 19, 1981, an owner or operator using a closure trust fund established prior to November 19, 1980 shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.

(2) The following shall be substituted for the provisions of 40 CFR 265.143(a)(6) which were not incorporated by reference: After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most

recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference; and

(3) The following shall be substituted for the provisions of 40 CFR 265.145(a)(3) which were not incorporated by reference:

(A) Except as otherwise provided in Part (h)(3)(B) of this Rule, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

(B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit cannot provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund during the interim status period shall be established by the Department by use of an Administrative Order.

(i) 40 CFR 265.170 through 265.178 (Subpart I), "Use and Management of Containers", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 265.174 (71 FR 40275, July 14, 2006) is incorporated by reference. Additionally, the owner or operator shall keep records and results of required inspections for at least three years from the date of the inspection.

(j) 40 CFR 265.190 through 265.202 (Subpart J), "Tank Systems", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 265.195(d) (71 FR 16910, Apr. 4, 2006) and 265.201 (71 FR 40275, July 14, 2006) are incorporated by reference.

(k) 40 CFR 265.220 through 265.231 (Subpart K), "Surface Impoundments", are incorporated by reference including subsequent amendments and editions.

(l) 40 CFR 265.250 through 265.260 (Subpart L), "Waste Piles", are incorporated by reference including subsequent amendments and editions.

(m) 40 CFR 265.270 through 265.282 (Subpart M), "Land Treatment", are incorporated by reference including subsequent amendments and editions.

(n) 40 CFR 265.300 through 265.316 (Subpart N), "Landfills", are incorporated by reference including subsequent amendments and editions.

(o) 40 CFR 265.340 through 265.352 (Subpart O), "Incinerators", are incorporated by reference including subsequent amendments and editions.

(p) 40 CFR 265.370 through 265.383 (Subpart P), "Thermal Treatment", are incorporated by reference including subsequent amendments and editions.

(q) 40 CFR 265.400 through 265.406 (Subpart Q), "Chemical, Physical, and Biological Treatment", are incorporated by reference including subsequent amendments and editions.

(r) 40 CFR 265.440 through 265.445 (Subpart W), "Drip Pads", are incorporated by reference including subsequent amendments and editions.

(s) 40 CFR 265.1030 through 265.1049 (Subpart AA), "Air Emission Standards for Process Vents", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 265.1030(b)(2) and 265.1030(b)(3) (62 FR 64661, Dec. 8, 1997) are incorporated by reference.

(t) 40 CFR 265.1050 through 265.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks", are incorporated by reference including subsequent amendments and ~~editions.~~, except that 40 CFR 265.1050 (69 FR 22661, Apr. 26, 2004) is incorporated by reference.

(u) 40 CFR 265.1080 through 265.1091 (Subpart CC), "Air Emission Standards for Tanks, Surface Impoundments, and Containers", are incorporated by reference including subsequent amendments and editions.

(v) 40 CFR 265.1100 through 265.1102 (Subpart DD), "Containment Buildings", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 265.1101(c)(4) (71 FR 40276, July 14, 2006) is incorporated by reference.

(w) 40 CFR 265.1200 through 265.1202 (Subpart EE), "Hazardous Waste Munitions and Explosives Storage", are incorporated by reference including subsequent amendments and editions.

(x) Appendices to 40 CFR Part 265 are incorporated by reference including subsequent amendments and editions.

History Note: *Authority G.S. 130A-294(c); 150B-21.6;*
Eff. November 19, 1980;
Amended Eff. June 1, 1989; December 1, 1988; June 1, 1988; February 1, 1988;
Transferred and Recodified from 10 NCAC 10F .0033 Eff. April 4, 1990;
Recodified from 15A NCAC 13A .0011 Eff. August 30, 1990;
Amended Eff. July 1, 1995; April 1, 1993; October 1, 1992; February 1, 1992;
Recodified from 15A NCAC 13A .0010 Eff. December 20, 1996;
Amended Eff. November 1, 2005; August 1, 2000; April 1, ~~1999.~~1999;
Temporary Amendment Eff. May 30, 2017.

TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0111 STDS FOR THE MGMT OF SPECIFIC HW/TYPES HWM FACILITIES – PART 266

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

   a. Proposed Temporary Rule submitted to OAH: 3/10/2017

   b. Proposed Temporary Rule published on the OAH website: 3/17/2017

   c. Public Hearing date: 4/3/2017

   d. Comment Period: 3/10/2017 through 4/7/2017

   e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2017

   f. Adoption by agency on: 5/11/2017

   g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

   h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

   ☐ A serious and unforeseen threat to the public health, safety or welfare.
   ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
   Cite:
   Effective date:
   ☐ A recent change in federal or state budgetary policy.
   Effective date of change:
   ☒ A recent federal regulation.
   Cite: Federal Register Vol. 81 No. 228, 85732 "Hazardous Waste Generator Improvements Rules"
   Effective date: 5/30/2017
   ☐ A recent court order.
   Cite order:
   ☐ State Medical Facilities Plan.
   ☐ Other:

Explain: See Attachments

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?
See Attachment

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ **Yes**
Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ **No**

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

E-Mail: Jennifer.Everett@ncdenr.gov

Agency contact, if any: Jenny Patterson

Phone: 336-767-0031

E-Mail: Jenny.Patterson@ncdenr.gov

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**
Typed Name: J. D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:	Submitted for RRC Review:
☐ Date returned to agency:	

Attachment for Block 6 of Form 500

Explain:

The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0111 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0111 by replacing references to requirements that update hazardous waste generator rule references (referring to rules that are not yet adopted) in Management Standards for Specific HW provisions in 40 CFR 266.80(a) and 266.255(a) which would otherwise automatically become effective with the federal rule on May 30, 2017. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

Attachment for Block 7 of Form 500

Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's Hazardous Waste Program was approved by the United States Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 6926 to be implemented in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

Federal regulation changes contained in the Hazardous Waste Generator Improvements Rule (81 Federal Register 85732, November 28, 2016) promulgated on November 28, 2016, become effective May 30, 2017. The revised federal regulation removes references to provisions that are integral to the North Carolina Hazardous Waste Management Program. The Environmental Management Commission acknowledges and understands that it will need to undertake rulemaking to amend its rules to be consistent with the federal RCRA program, but following the permanent rulemaking process would necessarily result in a gap in the effectiveness of certain rules adopted by reference where those rules have been renumbered, recodified, or otherwise amended, in the Code of Federal Regulations. Consequently, rules critical to the program and necessary for consistency with the federal RCRA program would not be in effect for a period of nine months or more. The temporary rulemaking process provides an opportunity to keep rules critical to the program (which would otherwise be lost due to the renumbering and recodification under the federal regulation amendment) by condensing the hearing and comment period that would otherwise be required.

The Environmental Management Commission will have to incorporate into its rules the provisions of the Hazardous Waste Generator Improvements Rule and will proceed to the permanent rulemaking, meeting the timeline required to maintain EPA's state authorization requirements. The temporary action is necessary to maintain the integrity of the Hazardous Waste Management Program Rules until permanent rulemaking can be completed. It is in the public interest that the Hazardous Waste Management Program not experience a gap in continuity or enforceability of its rules. Utilization of the temporary rulemaking process will ensure that continuity and integrity of the program is preserved. The rule is submitted to the Rules Review Commission within the 210-day period set forth in N.C.G.S. § 150B-21.1.

Over 7,000 hazardous waste generators will be affected by the changes from the Hazardous Waste Generator Improvements Rule. Also, directly affected by the changes are the Department of Environmental Quality, Division of Waste Management (DWM), Solid Waste Section as well as the DWM, Superfund Section, Special Remediation Branch, Dry Cleaning Solvent Cleanup Act (DSCA) Compliance Unit. The Solid Waste Section rules reference definitions and terminologies

from the hazardous waste regulations. The DSCA Compliance Unit administers a compliance inspection and enforcement program to ensure active dry-cleaning facilities and wholesale distribution facilities are compliant with the applicable hazardous waste regulations of 40 CFR Part 260 through 262. The temporary action allows more time for stakeholder input and training.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The information presented in this preamble is organized as follows:

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVI.A, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.*, consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting ("conditions for exemption") and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename "Conditionally exempt small quantity generators" as "Very small quantity generators." A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement ("independent requirements"). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes "generator knowledge" to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.*, acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.*, conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

XV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA-related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[104] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

[104] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). These changes are promulgated under non-HSWA authority.

Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13A .0111

DEADLINE FOR RECEIPT: Tuesday, May 16, 2017 at 5:00 p.m.

***PLEASE NOTE:* This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

As the prior rules in this packet were recently reviewed and approved by the Rules Review Commission, the use of commas is not consistent among the older rules. Please review the use of commas between the citation title and the language of "are/is incorporated…" The role of the comma after the quotation marks for the title of the CFR seems unnecessary.

Line 9, replace "must" with "shall"

Line 10, is the citation to the CFR accurate and complete? Please review.

Line 11, replace "must" with "shall"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, May 15, 2017

15A NCAC 13A .0111 is amended under temporary procedure as follows:

15A NCAC 13A .0111 STDS FOR THE MGMT OF SPECIFIC HW/TYPES HWM FACILITIES - PART 266

(a) 40 CFR 266.20 through 266.23 (Subpart C), "Recyclable Materials Used in a Manner Constituting Disposal", are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 266.70 (Subpart F), "Recyclable Materials Utilized for Precious Metal Recovery", is incorporated by reference including subsequent amendments and editions. Off-site recycling facilities that receive materials described in 40 CFR 266.70(a) must manage the materials in accordance with and comply with 40 CFR 262.34(a) as incorporated by reference in 15A NCAC 13A .0107(c), excluding 262.34(a)(3). Each container and tank holding recyclable materials at off-site precious metal recycling facilities must be labeled or marked with the words, "Recyclable Material".

(c) 40 CFR 266.80 (Subpart G), "Spent Lead-Acid Batteries Being Reclaimed", is incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 266.80(a) (81 FR 85727, Nov. 28, 2016) is incorporated by reference.

(d) 40 CFR 266.100 through 266.112 (Subpart H), "Hazardous Waste Burned in Boilers and Industrial Furnaces", are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 266.200 through 266.206 (Subpart M), "Military Munitions", are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 266.210 through 266.360 (Subpart N), "Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 266.255(a) (66 FR 27262, May 16, 2001) is incorporated by reference.

(g) Appendices to 40 CFR Part 266 are incorporated by reference including subsequent amendments and editions.

History Note: *Authority G.S. 130A-294(c); 150B-21.6;*
Eff. July 1, 1985;
Amended Eff. June 1, 1990; June 1, 1988; February 1, 1988; December 1, 1987;
Transferred and Recodified from 10 NCAC 10F .0039 Eff. April 4, 1990;
Recodified from 15A NCAC 13A .0012 Eff. August 30, 1990;
Amended Eff. January 1, 1995; April 1, 1993; August 1, 1991; October 1, 1990;
Recodified from 15A NCAC 13A .0011 Eff. December 20, 1996;
Amended Eff. April 1, 2006; April 1, 2003; April 1, 1999; August 1, ~~1998.~~1998;
Temporary Amendment Eff. May 30, 2017.

TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0112 LAND DISPOSAL RESTRICTIONS – PART 268

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

   a. Proposed Temporary Rule submitted to OAH: 3/10/2017

   b. Proposed Temporary Rule published on the OAH website: 3/17/2017

   c. Public Hearing date: 4/3/2017

   d. Comment Period: 3/10/2017 through 4/7/2017

   e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2017

   f. Adoption by agency on: 5/11/2017

   g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

   h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

   ☐ A serious and unforeseen threat to the public health, safety or welfare.
   ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
   Cite:
   Effective date:
   ☐ A recent change in federal or state budgetary policy.
   Effective date of change:
   ☒ A recent federal regulation.
   Cite: Federal Register Vol. 81 No. 228, 85732 "Hazardous Waste Generator Improvements Rules"
   Effective date: 5/30/2017
   ☐ A recent court order.
   Cite order:
   ☐ State Medical Facilities Plan.
   ☐ Other:

Explain: See Attachments

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

See Attachment

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ **Yes**
Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ **No**

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

E-Mail: Jennifer.Everett@ncdenr.gov

Agency contact, if any: Jenny Patterson

Phone: 336-767-0031

E-Mail: Jenny.Patterson@ncdenr.gov

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: J. D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

☐ Date returned to agency:

Submitted for RRC Review:

Attachment for Block 6 of Form 500

Explain:

The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0112 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0112 by replacing references to requirements that update hazardous waste generator rule references (referring to rules that are not yet adopted) in Land Disposal provisions in 40 CFR 268.1(e)(1), 268.7(a)(5) and 268.50(a) which would otherwise automatically become effective with the federal rule on May 30, 2017. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

Attachment for Block 7 of Form 500

Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's Hazardous Waste Program was approved by the United States Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 6926 to be implemented in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

Federal regulation changes contained in the Hazardous Waste Generator Improvements Rule (81 Federal Register 85732, November 28, 2016) promulgated on November 28, 2016, become effective May 30, 2017. The revised federal regulation removes references to provisions that are integral to the North Carolina Hazardous Waste Management Program. The Environmental Management Commission acknowledges and understands that it will need to undertake rulemaking to amend its rules to be consistent with the federal RCRA program, but following the permanent rulemaking process would necessarily result in a gap in the effectiveness of certain rules adopted by reference where those rules have been renumbered, recodified, or otherwise amended, in the Code of Federal Regulations. Consequently, rules critical to the program and necessary for consistency with the federal RCRA program would not be in effect for a period of nine months or more. The temporary rulemaking process provides an opportunity to keep rules critical to the program (which would otherwise be lost due to the renumbering and recodification under the federal regulation amendment) by condensing the hearing and comment period that would otherwise be required.

The Environmental Management Commission will have to incorporate into its rules the provisions of the Hazardous Waste Generator Improvements Rule and will proceed to the permanent rulemaking, meeting the timeline required to maintain EPA's state authorization requirements. The temporary action is necessary to maintain the integrity of the Hazardous Waste Management Program Rules until permanent rulemaking can be completed. It is in the public interest that the Hazardous Waste Management Program not experience a gap in continuity or enforceability of its rules. Utilization of the temporary rulemaking process will ensure that continuity and integrity of the program is preserved. The rule is submitted to the Rules Review Commission within the 210-day period set forth in N.C.G.S. § 150B-21.1.

Over 7,000 hazardous waste generators will be affected by the changes from the Hazardous Waste Generator Improvements Rule. Also, directly affected by the changes are the Department of Environmental Quality, Division of Waste Management (DWM), Solid Waste Section as well as the DWM, Superfund Section, Special Remediation Branch, Dry Cleaning Solvent Cleanup Act (DSCA) Compliance Unit. The Solid Waste Section rules reference definitions and terminologies

from the hazardous waste regulations. The DSCA Compliance Unit administers a compliance inspection and enforcement program to ensure active dry-cleaning facilities and wholesale distribution facilities are compliant with the applicable hazardous waste regulations of 40 CFR Part 260 through 262. The temporary action allows more time for stakeholder input and training.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The information presented in this preamble is organized as follows:

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVI.A, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.*, consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting ("conditions for exemption") and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename "Conditionally exempt small quantity generators" as "Very small quantity generators." A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement ("independent requirements"). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes "generator knowledge" to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.*, acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.*, conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

XV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA-related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[104] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

[104] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). These changes are promulgated under non-HSWA authority.

Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13A .0112

DEADLINE FOR RECEIPT: Tuesday, May 16, 2017 at 5:00 p.m.

***PLEASE NOTE:* This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

> *As the prior rules in this packet were recently reviewed and approved by the Rules Review Commission, the use of commas is not consistent among the older rules. Please review the use of commas between the citation title and the language of "are/is incorporated…" The role of the comma after the quotation marks for the title of the CFR seems unnecessary.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, May 15, 2017

15A NCAC 13A .0112 is amended under temporary procedure as follows:

15A NCAC 13A .0112 LAND DISPOSAL RESTRICTIONS - PART 268

(a) 40 CFR 268.1 through 268.14 (Subpart A), "General", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 268.1(e)(1) (70 FR 45520, Aug. 5, 2005) and 268.7(a)(5) (71 FR 40278, July 14, 2006) are incorporated by reference.

(b) 40 CFR 268.20 through 268.39 (Subpart C), "Prohibitions on Land Disposal", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 268.21 through 268.29 are not incorporated by reference.

(c) 40 CFR 268.40 through 268.49 (Subpart D), "Treatment Standards", are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 268.50 (Subpart E), "Prohibitions on Storage", is incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 268.50(a) (71 FR 40279, July 14, 2006) is incorporated by reference.

(e) Appendices to 40 CFR Part 268 are incorporated by reference including subsequent amendments and editions.

History Note: *Authority G.S. 130A-294(c); 150B-21.6;*
Eff. August 1, 1987;
Amended Eff. June 1, 1990; June 1, 1989; June 1, 1988; February 1, 1988;
Transferred and Recodified from 10 NCAC 10F .0042 Eff. April 4, 1990;
Recodified from 15A NCAC 13A .0013 Eff. August 30, 1990;
Amended Eff. April 1, 1995; January 1, 1995; April 1, 1993; February 1, 1991;
Recodified from 15A NCAC 13A .0012 Eff. December 20, 1996;
Amended Eff. November 1, 2005; August 1, 2000; August 1, ~~1998.~~1998;
Temporary Amendment Eff. May 30, 2017.

TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0113 THE HAZARDOUS WASTE PERMIT PROGRAM – PART 270

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

   a. Proposed Temporary Rule submitted to OAH: 3/10/2017

   b. Proposed Temporary Rule published on the OAH website: 3/17/2017

   c. Public Hearing date: 4/3/2017

   d. Comment Period: 3/10/2017 through 4/7/2017

   e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2017

   f. Adoption by agency on: 5/11/2017

   g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

   h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

   ☐ A serious and unforeseen threat to the public health, safety or welfare.
   ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
   Cite:
   Effective date:
   ☐ A recent change in federal or state budgetary policy.
   Effective date of change:
   ☒ A recent federal regulation.
   Cite: Federal Register Vol. 81 No. 228, 85732 "Hazardous Waste Generator Improvements Rules"
   Effective date: 5/30/2017
   ☐ A recent court order.
   Cite order:
   ☐ State Medical Facilities Plan.
   ☐ Other:

Explain: See Attachments

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?
See Attachment

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ **Yes**
Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ **No**

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

E-Mail: Jennifer.Everett@ncdenr.gov

Agency contact, if any: Jenny Patterson

Phone: 336-767-0031

E-Mail: Jenny.Patterson@ncdenr.gov

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**
Typed Name: J. D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:	Submitted for RRC Review:
☐ Date returned to agency:	

Attachment for Block 6 of Form 500

Explain:

The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0113 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0113 by replacing references to requirements which would otherwise automatically become effective with the federal rule on May 30, 2017 including: updating hazardous waste generator rule references (referring to rules that are not yet adopted) in Permit Program provisions 40 CFR 270.1(a)(3), (c)(2)(i) and (c)(2)(iii); and removing references to "Performance Track Member" in 40 CFR 270.42(l). The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

Attachment for Block 7 of Form 500

Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's Hazardous Waste Program was approved by the United States Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 6926 to be implemented in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

Federal regulation changes contained in the Hazardous Waste Generator Improvements Rule (81 Federal Register 85732, November 28, 2016) promulgated on November 28, 2016, become effective May 30, 2017. The revised federal regulation removes references to provisions that are integral to the North Carolina Hazardous Waste Management Program. The Environmental Management Commission acknowledges and understands that it will need to undertake rulemaking to amend its rules to be consistent with the federal RCRA program, but following the permanent rulemaking process would necessarily result in a gap in the effectiveness of certain rules adopted by reference where those rules have been renumbered, recodified, or otherwise amended, in the Code of Federal Regulations. Consequently, rules critical to the program and necessary for consistency with the federal RCRA program would not be in effect for a period of nine months or more. The temporary rulemaking process provides an opportunity to keep rules critical to the program (which would otherwise be lost due to the renumbering and recodification under the federal regulation amendment) by condensing the hearing and comment period that would otherwise be required.

The Environmental Management Commission will have to incorporate into its rules the provisions of the Hazardous Waste Generator Improvements Rule and will proceed to the permanent rulemaking, meeting the timeline required to maintain EPA's state authorization requirements. The temporary action is necessary to maintain the integrity of the Hazardous Waste Management Program Rules until permanent rulemaking can be completed. It is in the public interest that the Hazardous Waste Management Program not experience a gap in continuity or enforceability of its rules. Utilization of the temporary rulemaking process will ensure that continuity and integrity of the program is preserved. The rule is submitted to the Rules Review Commission within the 210-day period set forth in N.C.G.S. § 150B-21.1.

Over 7,000 hazardous waste generators will be affected by the changes from the Hazardous Waste Generator Improvements Rule. Also, directly affected by the changes are the Department of Environmental Quality, Division of Waste Management (DWM), Solid Waste Section as well as the DWM, Superfund Section, Special Remediation Branch, Dry Cleaning Solvent Cleanup Act (DSCA) Compliance Unit. The Solid Waste Section rules reference definitions and terminologies

from the hazardous waste regulations. The DSCA Compliance Unit administers a compliance inspection and enforcement program to ensure active dry-cleaning facilities and wholesale distribution facilities are compliant with the applicable hazardous waste regulations of 40 CFR Part 260 through 262. The temporary action allows more time for stakeholder input and training.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The information presented in this preamble is organized as follows:

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVI.A, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.*, consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting ("conditions for exemption") and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename "Conditionally exempt small quantity generators" as "Very small quantity generators." A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement ("independent requirements"). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes "generator knowledge" to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.*, acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.*, conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

XV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA-related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[104] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

[104] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). These changes are promulgated under non-HSWA authority.

Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13A .0113

DEADLINE FOR RECEIPT: Tuesday, May 16, 2017 at 5:00 p.m.

***PLEASE NOTE:* This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

As the prior rules in this packet were recently reviewed and approved by the Rules Review Commission, the use of commas is not consistent among the older rules. Please review the use of commas between the citation title and the language of "are/is incorporated…" The role of the comma after the quotation marks for the title of the CFR seems unnecessary.

Lines 11 thru 29, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Line 17, is the use of a semicolon after "facility" accurate? Should it be a comma? Please review

Line 23, add a comma after "agricultural"

Lines 24 thru 26, please review punctuation. There is a mixture of semicolons and commas used in this sentence. The use of commas seems correct.

Line 29, define or delete "reasonably"

Lines 29 thru 30, is this waiving a standard? If this sentence is creating a waiver or modification as referenced in G.S. 150B-19(g), please clarify by adding the factors considered by the Department.

Lines 33 thru 37, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Page 2, lines 3 thru 7, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, May 15, 2017

Page 2, lines 25 thru 26, what is meant by "or any time thereafter specified by the Department"? Please clarify

Page 2, lines 28 thru 33, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Page 2, line 35, add a comma after "federal"

Page 3, lines 13 thru 18, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Page 3, line 21, what is meant by "finds that any part or parts of the disclosure statement is not necessary"? If this sentence is creating a waiver or modification as referenced in G.S. 150B-19(g), please clarify by adding the factors considered by the Department.

Page 3, line 23, delete the comma after "existing"

Page 3, line 23, delete the comma after "permit"

Page 3, line 27, add "of this Rule" after "Paragraph (n)"

Page 4, lines 15 thru 16, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Page 4, line 19, replace "must" with "shall"

Page 4, lines 21 thru 26, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Page 4, line 24, replace "must" with "shall"

Page 4, lines 32 thru 34, what it the statutory authority for the fees changed? How is the "Class" of the permit known? Please clarify and update the history note accordingly.

Page 4, lines 35 thru 36, what does this "Note" mean? How is it known who does not require prior approval? Please clarify.

Page 5, line 1, replace "must" with "shall"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, May 15, 2017

15A NCAC 13A .0113 is amended under temporary procedure as follows:

15A NCAC 13A .0113 THE HAZARDOUS WASTE PERMIT PROGRAM - PART 270

(a) 40 CFR 270.1 through 270.6 (Subpart A), "General Information", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 270.1(a)(3), 270.1(c)(2)(i) and 270.1(c)(2)(iii) (71 FR 40279, July 14, 2006) are incorporated by reference. For the purpose of this incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 270.1(c).

(b) 40 CFR 270.10 through 270.29 (Subpart B), "Permit Application", are incorporated by reference including subsequent amendments and editions.

(c) The following are additional Part B information requirements for all hazardous waste facilities:

(1) Description and documentation of the public meetings as required in 15A NCAC 13A .0109(r)(7);

(2) A description of the hydrological and geological properties of the site including flood plains, depth to water table, ground water travel time, seasonal and long-term groundwater level fluctuations, proximity to public water supply watersheds, consolidated rock, soil pH, soil cation exchange capacity, soil characteristics and composition and permeability, existence of cavernous bedrock and seismic activity, slope, mines, climate, location and withdrawal rates of surface water users within the immediate drainage basin and well water users within a one mile radius of the facility; water quality information of both surface and groundwater within 1000 feet of the facility, and a description of the local air quality;

(3) A description of the facility's proximity to and potential impact on wetlands, endangered species habitats, parks, forests, wilderness areas, historical sites, mines, and air quality;

(4) A description of local land use including residential, industrial, commercial, recreational, agricultural and the proximity to schools and airports;

(5) A description of the proximity of the facility to waste generators and population centers; a description of the method of waste transportation; the comments of the local community and state transportation authority on the proposed route, and route safety. Comments shall include proposed alternative routes and restrictions necessary to protect the public health;

(6) A description of facility aesthetic factors including visibility, appearance, and noise level; and

(7) A description of any other objective factors that the Department determines are reasonably related and relevant to the proper siting and operation of the facility.

(d) In addition to the specific Part B information requirements for hazardous waste disposal facilities, owners and operators of hazardous waste landfills or longterm storage facilities shall provide the following information:

(1) Design drawings and specifications of the leachate collection and removal system;

(2) Design drawings and specifications of the artificial impervious liner;

(3) Design drawings and specifications of the clay or clay-like liner below the artificial liner, and a description of the permeability of the clay or clay-like liner; and

(4) A description of how hazardous wastes will be treated prior to placement in the facility.

(e) In addition to the specific Part B information requirements for surface impoundments, owners and operators of surface impoundments shall provide the following information:

(1) Design drawings and specifications of the leachate collection and removal system;

(2) Design drawings and specifications of all artificial impervious liners;

(3) Design drawings and specifications of all clay or clay-like liners and a description of the clay or clay-like liner; and

(4) Design drawings and specifications that show that the facility has been constructed in a manner that will prevent landsliding, slippage, or slumping.

(f) 40 CFR 270.30 through 270.33 (Subpart C), "Permit Conditions", are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 270.40 through 270.43 (Subpart D), "Changes to Permit", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 270.42(l) and the entries under O.1 in the table of appendix I to 40 CFR 270.42 (80 FR 58012, Sept. 25, 2015) are incorporated by reference.

(h) 40 CFR 270.50 through 270.51 (Subpart E), "Expiration and Continuation of Permits", are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 270.60 through. 270.68 (Subpart F), "Special Forms of Permits", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 270.67 and 270.68 are not incorporated by reference.

(j) 40 CFR 270.70 through 270.73 (Subpart G), "Interim Status", are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 1, 1986" shall be substituted for "November 8, 1985" contained in 40 CFR 270.73(c).

(k) 40 CFR 270.235, (Subpart I), "Integration with Maximum Achievable Control Technology (MACT) Standards", is incorporated by reference including subsequent amendments and editions.

(l) The following are additional permitting requirements for hazardous waste facilities.

(1) An applicant applying for a permit for a hazardous waste facility shall submit a disclosure statement to the Department as a part of the application for a permit or any time thereafter specified by the Department. The disclosure statement shall be supported by an affidavit attesting to the truth and completeness of the facts asserted in the statement and shall include:

(A) A brief description of the form of the business (e.g. partnership, sole proprietorship, corporation, association, or other);

(B) The name and address of any hazardous waste facility constructed or operated after October 21, 1976 by the applicant or any parent or subsidiary corporation if the applicant is a corporation; and

(C) A list identifying any legal action taken against any facility identified in Part (l)(1)(B) of this Rule involving:

(i) any administrative ruling or order issued by any state, federal or local authority relating to revocation of any environmental or waste management permit or

license, or to a violation of any state or federal statute or local ordinance relating to waste management or environmental protection;

(ii) any judicial determination of liability or conviction under any state or federal law or local ordinance relating to waste management or environmental protection; and

(iii) any pending administrative or judicial proceeding of the type described in this Part.

(D) The identification of each action described in Part (l)(1)(C) of this Rule shall include the name and location of the facility that the action concerns, the agency or court that heard or is hearing the matter, the title, docket or case number, and the status of the proceeding.

(2) In addition to the information set forth in Subparagraph (l)(1) of this Rule, the Department shall require from any applicant such additional information as it deems necessary to satisfy the requirements of G.S. 130A-295. Such information may include:

(A) The names, addresses, and titles of all officers, directors, or partners of the applicant and of any parent or subsidiary corporation if the applicant is a corporation;

(B) The name and address of any company in the field of hazardous waste management in which the applicant business or any of its officers, directors, or partners, hold an equity interest and the name of the officer, director, or partner holding such interest; and

(C) A copy of any administrative ruling or order and of any judicial determination of liability or conviction described in Part (l)(1)(C) of this Rule, and a description of any pending administrative or judicial proceeding in that item.

(3) If the Department finds that any part or parts of the disclosure statement is not necessary to satisfy the requirements of G.S. 130A-295, such information shall not be required.

(m) An applicant for a new, or modification to an existing, commercial facility permit, shall provide a description and justification of the need for the facility.

(n) Requirements for Off-site Recycling Facilities.

(1) The permit requirements of 15A NCAC 13A .0109 apply to owners and operators of off-site recycling facilities unless excluded in Subparagraph (2) of Paragraph (n).

(2) Requirements of 15A NCAC 13A .0113(n)(4), (5), (6), (7) and (8) do not apply to owners and operators of off-site recycling facilities that recycle only precious metals as described in 40 CFR 266.70(a), as incorporated by reference in 15A NCAC 13A .0111(b).

(3) Off-site facilities that recycle precious metals shall follow the regulations as described in 15A NCAC 13A .0111(b).

(4) Notwithstanding any other statement of applicability, the following provisions of 40 CFR Part 264, as incorporated by reference, shall apply to owners and operators of off-site recycling facilities except those excluded in 15A NCAC 13A .0113(n)(2):

(A) Subpart B - General Facility Standards;

(B) Subpart C - Preparedness and Prevention;

(C) Subpart D - Contingency Plan and Emergency Procedures;

(D) Subpart E - Manifest System, Recordkeeping and Reporting;

(E) Subpart G - Closure and Post-closure;

(F) Subpart H - Financial Requirements;

(G) Subpart I - Use and Management of Containers;

(H) Subpart J - Tank Systems;

(I) 264.101 - Corrective Action for Solid Waste Management Units;

(J) Subpart X - Miscellaneous Units; and

(K) Subpart DD - Containment Buildings.

(5) The requirements listed in Subparagraph (n)(4) of this Rule apply to the entire off-site recycling facility, including all recycling units, staging and process areas, and permanent and temporary storage areas for wastes.

(6) The following provisions of 15A NCAC 13A .0109 shall apply to owners and operators of off-site recycling facilities:

(A) The substitute financial requirements of Rule .0109(i)(1), (2) and (4); and

(B) The additional standards of Rule .0109(r)(1), (2), (3), (6) and (7).

(7) The owner or operator of an off-site recycling facility shall keep a written operating record at his facility.

(8) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(A) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or recycling at the facility;

(B) The location of all hazardous waste within the facility and the quantity at each location. This information must include cross-references to specific manifest document numbers if the waste was accompanied by a manifest; and

(C) Documentation of the fate of all hazardous wastes received from off-site or generated on-site. This shall include records of the sale, reuse, off-site transfer, or disposal of all waste materials.

(o) Permit Fees for Commercial Hazardous Waste Facilities.

(1) An applicant for a permit modification for a commercial hazardous waste facility shall pay an application fee as follows:

(A) Class 1 permit modification $100;

(B) Class 2 permit modification $1,000; or

(C) Class 3 permit modification $5,000.

Note: Class 1 permit modifications which do not require prior approval of the Division Director are excluded from the fee requirement.

(2) The application fee for a new permit, permit renewal, or permit modification must accompany the application, and is non-refundable. The application shall be considered incomplete until the fee is paid. Checks shall be made payable to: Division of Waste Management.

History Note: *Authority G.S. 130A-294(c); 130A-294.1; 130A-295(a)(1),(2), (c); 150B-21.6;*
Eff. November 19, 1980;
Amended Eff. November 1, 1989; June 1, 1988; February 1, 1988; December 1, 1987;
Transferred and Recodified from 10 NCAC 10F .0034 April 4, 1990;
Amended Eff. August 1, 1990;
Recodified from 15A NCAC 13A .0014 Eff. August 30, 1990;
Amended Eff. April 1, 1993; August 1, 1991; October 1, 1990;
Recodified from 15A NCAC 13A .0013 Eff. December 20, 1996;
Amended Eff. August 1, 2008; April 1, 2006; August 1, 2004; April 1, 2001; August 1, ~~2000.~~2000;
Temporary Amendment Eff. May 30, 2017.

TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0118 STANDARDS FOR THE MANAGEMENT OF USED OIL

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

   a. Proposed Temporary Rule submitted to OAH: 3/10/2017

   b. Proposed Temporary Rule published on the OAH website: 3/17/2017

   c. Public Hearing date: 4/3/2017

   d. Comment Period: 3/10/2017 through 4/7/2017

   e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2017

   f. Adoption by agency on: 5/11/2017

   g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

   h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

   ☐ A serious and unforeseen threat to the public health, safety or welfare.
   ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
   Cite:
   Effective date:
   ☐ A recent change in federal or state budgetary policy.
   Effective date of change:
   ☒ A recent federal regulation.
   Cite: Federal Register Vol. 81 No. 228, 85732 "Hazardous Waste Generator Improvements Rules"
   Effective date: 5/30/2017
   ☐ A recent court order.
   Cite order:
   ☐ State Medical Facilities Plan.
   ☐ Other:

Explain: See Attachments

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?
See Attachment

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ **Yes**
Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ **No**

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

E-Mail: Jennifer.Everett@ncdenr.gov

Agency contact, if any: Jenny Patterson

Phone: 336-767-0031

E-Mail: Jenny.Patterson@ncdenr.gov

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**
Typed Name: J. D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:	Submitted for RRC Review:
☐ Date returned to agency:	

Attachment for Block 6 of Form 500

Explain:

The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0118 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0118 by replacing references to requirements that update hazardous waste generator rule references (referring to rules that are not yet adopted) in Used Oil Management provision 40 CFR 279.10(b)(3) which would otherwise automatically become effective with the federal rule on May 30, 2017. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

Attachment for Block 7 of Form 500

Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's Hazardous Waste Program was approved by the United States Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 6926 to be implemented in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

Federal regulation changes contained in the Hazardous Waste Generator Improvements Rule (81 Federal Register 85732, November 28, 2016) promulgated on November 28, 2016, become effective May 30, 2017. The revised federal regulation removes references to provisions that are integral to the North Carolina Hazardous Waste Management Program. The Environmental Management Commission acknowledges and understands that it will need to undertake rulemaking to amend its rules to be consistent with the federal RCRA program, but following the permanent rulemaking process would necessarily result in a gap in the effectiveness of certain rules adopted by reference where those rules have been renumbered, recodified, or otherwise amended, in the Code of Federal Regulations. Consequently, rules critical to the program and necessary for consistency with the federal RCRA program would not be in effect for a period of nine months or more. The temporary rulemaking process provides an opportunity to keep rules critical to the program (which would otherwise be lost due to the renumbering and recodification under the federal regulation amendment) by condensing the hearing and comment period that would otherwise be required.

The Environmental Management Commission will have to incorporate into its rules the provisions of the Hazardous Waste Generator Improvements Rule and will proceed to the permanent rulemaking, meeting the timeline required to maintain EPA's state authorization requirements. The temporary action is necessary to maintain the integrity of the Hazardous Waste Management Program Rules until permanent rulemaking can be completed. It is in the public interest that the Hazardous Waste Management Program not experience a gap in continuity or enforceability of its rules. Utilization of the temporary rulemaking process will ensure that continuity and integrity of the program is preserved. The rule is submitted to the Rules Review Commission within the 210-day period set forth in N.C.G.S. § 150B-21.1.

Over 7,000 hazardous waste generators will be affected by the changes from the Hazardous Waste Generator Improvements Rule. Also, directly affected by the changes are the Department of Environmental Quality, Division of Waste Management (DWM), Solid Waste Section as well as the DWM, Superfund Section, Special Remediation Branch, Dry Cleaning Solvent Cleanup Act (DSCA) Compliance Unit. The Solid Waste Section rules reference definitions and terminologies

from the hazardous waste regulations. The DSCA Compliance Unit administers a compliance inspection and enforcement program to ensure active dry-cleaning facilities and wholesale distribution facilities are compliant with the applicable hazardous waste regulations of 40 CFR Part 260 through 262. The temporary action allows more time for stakeholder input and training.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The information presented in this preamble is organized as follows:

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVI.A, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.*, consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting ("conditions for exemption") and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename "Conditionally exempt small quantity generators" as "Very small quantity generators." A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement ("independent requirements"). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes "generator knowledge" to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.*, acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.*, conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

XV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA-related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[104] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

[104] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). These changes are promulgated under non-HSWA authority.

Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13A .0118

DEADLINE FOR RECEIPT: Tuesday, May 16, 2017 at 5:00 p.m.

***PLEASE NOTE:* This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

As the prior rules in this packet were recently reviewed and approved by the Rules Review Commission, the use of commas is not consistent among the older rules. Please review the use of commas between the citation title and the language of "are/is incorporated…" The role of the comma after the quotation marks for the title of the CFR seems unnecessary.

Line 22, delete "{Note:"

Line 22, delete the comma after "279.82"

Line 22, replace "which" with "that"

Line 23, delete "See also"

Line 23, delete "for"

Line 24, replace "prohibited" with "prohibits"

Line 24, replace "oil}." with "oil."

Line 28, references a form. G.S. 150B-2(8a)d does not require a form to be a rule if "the contents or substantive requirements of which are prescribed by rule or statute." Is there a rule or statute that provides the information required in the application? Could it be cross-referenced? Please clarify.

Lines 29 thru 33, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Line 34, replace "are not" with "shall not be"

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, May 15, 2017

Line 34 thru 35, is the citation to the NCAC to this Rule? Consider clarifying with "Subparagraph (j)(1) of this Rule:"

Line 36, and page 2, line 1, as these clauses appear to be part of a list, please consider beginning the clauses with lowercase letters

Line 36, replace "which" with 'that"

Page 2, lines 3 thru 4, what it the statutory authority for the fees changed? Please clarify and update the history note accordingly.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, May 15, 2017

15A NCAC 13A .0118 is amended under temporary procedure as follows:

15A NCAC 13A .0118 STANDARDS FOR THE MANAGEMENT OF USED OIL

(a) 40 CFR 279.1 (Subpart A), "Definitions", is incorporated by reference including subsequent amendments and editions, except that the Definition for "Used Oil" is defined by G.S. 130A-290(b) and is not incorporated by reference.

(b) 40 CFR 279.10 through 279.12 (Subpart B), "Applicability", are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 279.10(b)(3) (71 FR 40280, July 14, 2006) is incorporated by reference.

(c) 40 CFR 279.20 through 279.24 (Subpart C), "Standards for Used Oil Generators", are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 279.30 through 279.32 (Subpart D), "Standards for Used Oil Collection Centers and Aggregation Points", are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 279.40 through 279.47 (Subpart E), "Standards for Used Oil Transporter and Transfer Facilities", are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 279.50 through 279.59 (Subpart F), "Standards for Used Oil Processors and Re-Refiners", are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 279.60 through 279.67 (Subpart G), "Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery", are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 279.70 through 279.75 (Subpart H), "Standards for Used Oil Fuel Marketers", are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 279.80 through 279.81 (Subpart I), "Standards for Use as a Dust Suppressant and Disposal of Used Oil" are incorporated by reference including subsequent amendments and editions. {Note: 40 CFR 279.82, which addresses used oil as a dust suppressant, is specifically not incorporated by reference. See also G.S. 130A-309.15 for prohibited acts regarding used oil}.

(j) Additional State Requirements:

(1) By July 1 of each year the following persons shall notify the Department by submitting an annual report listing the type and quantity of used oil transported, collected, and recycled during the preceding calendar year, on Department forms:

(A) Persons transporting more than 500 gallons of used oil per week over public highways;

(B) Collection facilities that annually receive more than 6,000 gallons of used oil excluding the volume of used oil collected from individuals that change their own personal motor oil;

(C) Facilities that annually recycle more than 10,000 gallons of used oil; and

(D) Public used oil collection centers.

(2) The following persons are not required to comply with ~~15A NCAC 13A .0118(j)(1)~~15A NCAC 13A .0118(j)(1):

(A) An electric utility that generates used oil which is reclaimed, recycled, or re-refined on-site for use in its operations; and

(B) An on-site burner that burns its own on-specification used oil provided that the facility is in compliance with any Air Quality permit requirements established by the Department.

(3) An annual fee of twenty five dollars ($25.00) shall be paid by all persons identified in 15A NCAC 13A .0118(j)(1)(A) through .0118(j)(1)(C) by July 1 of each year.

History Note: *Authority G.S. 130A-294(b),(c); 150B-21.6;*
Eff. October 1, 1993;
Recodified from 15A NCAC 13A .0018 Eff. December 20, 1996;
Amended Eff. August 1, ~~2000.~~2000;
Temporary Amendment Eff. May 30, 2017.

TEMPORARY RULE-MAKING
FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY
VOLUME:
ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0119 STANDARDS FOR UNIVERSAL WASTE MANAGEMENT – PART 273

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

   a. Proposed Temporary Rule submitted to OAH: 3/10/2017

   b. Proposed Temporary Rule published on the OAH website: 3/17/2017

   c. Public Hearing date: 4/3/2017

   d. Comment Period: 3/10/2017 through 4/7/2017

   e. Notice pursuant to G.S. 150B-21.1(a3)(2): 3/10/2017

   f. Adoption by agency on: 5/11/2017

   g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

   h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

   ☐ A serious and unforeseen threat to the public health, safety or welfare.
   ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
   Cite:
   Effective date:
   ☐ A recent change in federal or state budgetary policy.
   Effective date of change:
   ☒ A recent federal regulation.
   Cite: Federal Register Vol. 81 No. 228, 85732 "Hazardous Waste Generator Improvements Rules"
   Effective date: 5/30/2017
   ☐ A recent court order.
   Cite order:
   ☐ State Medical Facilities Plan.
   ☐ Other:

Explain: See Attachments

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?
See Attachment

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ **Yes**
Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ **No**

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

E-Mail: Jennifer.Everett@ncdenr.gov

Agency contact, if any: Jenny Patterson

Phone: 336-767-0031

E-Mail: Jenny.Patterson@ncdenr.gov

10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**
Typed Name: J. D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

☐ Date returned to agency:

Submitted for RRC Review:

Attachment for Block 6 of Form 500

Explain:

The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0119 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0119 by replacing references to requirements which would otherwise automatically become effective with the federal rule on May 30, 2017 including updating hazardous waste generator rule references (referring to rules that are not yet adopted) in Universal Waste provisions in 40 CFR 273.8(a)(2) and 273.81(b). The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

Attachment for Block 7 of Form 500

Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

North Carolina's Hazardous Waste Program was approved by the United States Environmental Protection Agency (EPA) pursuant to 42 U.S.C. § 6926 to be implemented in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

Federal regulation changes contained in the Hazardous Waste Generator Improvements Rule (81 Federal Register 85732, November 28, 2016) promulgated on November 28, 2016, become effective May 30, 2017. The revised federal regulation removes references to provisions that are integral to the North Carolina Hazardous Waste Management Program. The Environmental Management Commission acknowledges and understands that it will need to undertake rulemaking to amend its rules to be consistent with the federal RCRA program, but following the permanent rulemaking process would necessarily result in a gap in the effectiveness of certain rules adopted by reference where those rules have been renumbered, recodified, or otherwise amended, in the Code of Federal Regulations. Consequently, rules critical to the program and necessary for consistency with the federal RCRA program would not be in effect for a period of nine months or more. The temporary rulemaking process provides an opportunity to keep rules critical to the program (which would otherwise be lost due to the renumbering and recodification under the federal regulation amendment) by condensing the hearing and comment period that would otherwise be required.

The Environmental Management Commission will have to incorporate into its rules the provisions of the Hazardous Waste Generator Improvements Rule and will proceed to the permanent rulemaking, meeting the timeline required to maintain EPA's state authorization requirements. The temporary action is necessary to maintain the integrity of the Hazardous Waste Management Program Rules until permanent rulemaking can be completed. It is in the public interest that the Hazardous Waste Management Program not experience a gap in continuity or enforceability of its rules. Utilization of the temporary rulemaking process will ensure that continuity and integrity of the program is preserved. The rule is submitted to the Rules Review Commission within the 210-day period set forth in N.C.G.S. § 150B-21.1.

Over 7,000 hazardous waste generators will be affected by the changes from the Hazardous Waste Generator Improvements Rule. Also, directly affected by the changes are the Department of Environmental Quality, Division of Waste Management (DWM), Solid Waste Section as well as the DWM, Superfund Section, Special Remediation Branch, Dry Cleaning Solvent Cleanup Act (DSCA) Compliance Unit. The Solid Waste Section rules reference definitions and terminologies

from the hazardous waste regulations. The DSCA Compliance Unit administers a compliance inspection and enforcement program to ensure active dry-cleaning facilities and wholesale distribution facilities are compliant with the applicable hazardous waste regulations of 40 CFR Part 260 through 262. The temporary action allows more time for stakeholder input and training.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Table of Contents

The information presented in this preamble is organized as follows:

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVI.A, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.*, consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting ("conditions for exemption") and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename "Conditionally exempt small quantity generators" as "Very small quantity generators." A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement ("independent requirements"). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes "generator knowledge" to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.*, acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.*, conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

XV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA-related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[104] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

[104] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). These changes are promulgated under non-HSWA authority.

Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action is a "significant regulatory action" in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Any changes made in response to OMB recommendations have been documented in the docket.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13A .0119

DEADLINE FOR RECEIPT: Tuesday, May 16, 2017 at 5:00 p.m.

***PLEASE NOTE:* This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 20, replace "which were" with "that are"

Line 23, add a comma after "Subpart"

Line 23, delete the "and" between "Subpart" and "15A"

Line 23, check the NCAC citation as 15A NCAC 24 was transferred and recodified as 10A NCAC 45 effective June 1, 2003. Please review and update accordingly.

Line 25, replace "which were" with "that are"

Line 29, replace the semicolon after "waste" with a comma

Line 30, replace the semicolon after "waste" with a comma

Line 32, check the NCAC citation as 15A NCAC 24 was transferred and recodified as 10A NCAC 45 effective June 1, 2003. Please review and update accordingly.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, May 15, 2017

15A NCAC 13A .0119 is amended under temporary procedure as follows:

15A NCAC 13A .0119 STANDARDS FOR UNIVERSAL WASTE MANAGEMENT - PART 273

(a) 40 CFR 273.1 through 273.9 (Subpart A), "General" are incorporated by reference including subsequent amendments and ~~editions.~~editions, except that 40 CFR 273.8 (a)(2) (64 FR 36488, July 6, 1999) is incorporated by reference.

(b) 40 CFR 273.10 through 273.20 (Subpart B), "Standards for Small Quantity Handlers of Universal Waste" are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 273.30 through 273.40 (Subpart C), "Standards for Large Quantity Handlers of Universal Waste" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 273.50 through 273.56 (Subpart D), "Standards for Universal Waste Transporters" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 273.60 through 273.62 (Subpart E), "Standards for Destination Facilities" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 273.70 (Subpart F), "Import Requirements" is incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 273.80 through 273.81 (Subpart G), "Petitions to include Other Wastes Under 40 CFR Part 273" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 273.81(b) (64 FR 36490, July 6, 1999) is incorporated by reference, and 40 CFR 273.80(a) and (b), are not incorporated by reference.

(1) The following shall be substituted for the provisions of 40 CFR 273.80(a) which were not incorporated by reference:

Any person seeking to add a hazardous waste or a category of hazardous waste to this Part may petition for a regulatory amendment under this Subpart and 15A NCAC 24B .0001 and 40 CFR 260.23.

(2) The following shall be substituted for the provisions of 40 CFR 273.80(b) which were not incorporated by reference:

To be successful, the petitioner must demonstrate to the satisfaction of the Administrator that regulation under the universal waste regulations of 40 CFR Part 273 is:

(A) appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program;

(B) the petition must include the information required by 15A NCAC 24B .0001; and

(C) the petition shall also address as many of the factors listed in 40 CFR 273.81 as are appropriate for the waste or waste category addressed in the petition.

History Note: *Authority G.S. 130A-294(c); 150B-21.6;*
Eff. January 1, 1996;

Recodified from 15A NCAC 13A .0019 Eff. December 20, 1996;
Amended Eff. April 1, 2001; August 1, ~~1998.~~1998;
Temporary Amendment Eff. May 30, 2017.