

# DO ME A SOLID

## NEW HAZARDOUS WASTE RECORD KEEPING DETERMINATION REQUIREMENTS

I cannot think of any company that does not generate some type of solid waste. But, EPA is not sure that every company who generates solid waste is making an accurate determination as to whether that solid waste is a hazardous waste. All hazardous waste is solid waste. What I mean is, the hazardous waste regulations are found in 40 CFR Subchapter I of the Solid Waste Regulations under EPA, that's why generators must keep track of their solid waste, in order to ensure their hazardous wastes are properly managed under the RCRA regulations. Currently, I believe 17 States require generators to document and track their solid wastes.

## WASTE DETERMINATION

EPA requires that "hazardous waste determination for each solid waste **must be made at the point of waste generation**, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the RCRA classification of the waste may change."

## LISTED OR CHARACTERISTIC WASTE

There are basically two ways for a person to become a hazardous waste generator, first would be by generating a listed waste, like a listed spend solvent, in 262.31, by carrying out a listed waste process in 262.32, or by discarding a listed pure chemical in 262.33 in 40 CFR Subpart D The Lists of Hazardous Waste. Then, regardless of whether the waste is listed or not, the generator would be required to see if the material meets the definition of ignitable, corrosive, reactive or toxic prescribed by the tests in 262.20, Subpart C The Characteristics of a Hazardous Waste.

## SUBPART D LISTED

EPA acknowledges that most generators use generator knowledge to make their hazardous waste determinations, which is appropriate, if accurate. In the new Hazardous Waste Generator Improvements rule; EPA states, " In fact, generators can only use knowledge of their process and knowledge of the materials used in the production process to determine whether their waste meets any of the F-, K-, P- and U- waste listings."

## **SUBPART C CHARACTERISTIC**

However, generators of characteristic waste have the option of either carrying out the testing in Subpart C, as prescribed, or simply using their generator knowledge of the manufacturing process, information about the product, its components, any by-products and generator testing on the material that could cause the material to be a hazardous waste.

If the available knowledge or alternative testing done by the generator, is inaccurate to making the correct determination, the person must have a representative sample of the waste tested according the Hazardous Waste Characteristics in Subpart C or an equivalent method approved by the Administrator. But, be aware if testing is required then the material must be managed as hazardous waste, until test results are received, confirming or ruling out it's further management as a hazardous waste.

This is not new, this is considered to be a clarification under the new rule. Regardless whether the waste is tested under Subpart C or is listed in Subpart D generators must document and maintain their hazardous waste determination records.

## **TESTING DOCUMENTATION RECORDS**

The hazardous waste testing documentation record keeping requirements have recently been clarified in 40 CFR 262.11 Hazardous Waste Determination And Record Keeping, for the types of information that inspectors will be asking for when testing is carried out by the generator, and which would include:

1. The chemical or physical characteristics of the wastes.
2. Information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste.
3. Results from the testing, that illustrates the properties and characteristics of the solid waste used to determine if the material is a hazardous waste.

## **GENERATOR KNOWLEDGE DETERMINATION RECORDS**

However, when testing is not performed on a solid waste, to determine if it is a hazardous waste, generators must qualify the wastes determination by maintaining the following documentation for inspectors:

1. The chemical constituents, including feedstocks and other inputs to the production process.
2. Products, by-products, and intermediates produced by the manufacturing process.
3. Chemical or physical characteristics of the wastes.

4. The chemical and physical properties of the chemicals used or produced by the process.
5. Methods and results of any testing, other than those in Subpart C, that were used as part of a person's knowledge to determine whether the solid waste is hazardous waste.

## **RETENTION OF RECORDS**

It should also be noted that all hazardous waste determination records must be kept for three years from the date that the waste was sent for disposal, unless the record retention requirements are automatically extended in the event of an unresolved enforcement action or requested by the EPA.

This is only one of the recent clarifications in the new Hazardous Waste Generator Improvements Rule, that are contained in our new 2017/2018 Hazardous Materials Substance and Waste Compliance Guide. All of which will be covered in our in-house and regularly scheduled Hazardous Material Substance and Waste Compliance Seminars, which should be in your town soon. If you have any questions, comments or input please let us know.

Thank you for your leadership and support.



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