

3

Three G's, Three Trips to Denver & The Three Day Rule

I recently had the opportunity to visit and spend time in the City of Denver, for the third time. My first was in 1974, then again in 1985 and now in 2017. Let me clarify, in addition to publishing the Hazardous Materials, Substances and Wastes Compliance Guide, I run both scheduled and in-house seminars, most of which are scheduled at airport hotels. My father used to say, the three most important things when doing a seminar are **Get** there, **Get** paid and **Get** out of town, as he referred to as the "Three G's". So, I stay close to the airport. Now, it's not that I do not appreciate the uniqueness of a small hamlet but, I for some reason love old cities, the dirt, the decay, the distrust, the destitute, the delivered and all that falls in between.

Third Time's a Charm

Now, because of my advancing age and diminishing strength, over the last few years I have tried to slow down, you know, take a little more time on each trip. So, the last the time I had a seminar at the Denver airport instead of just flying in and staying at an airport hotel, then flying out of town to my next seminar in Houston, I decided to leave a day early. I left later in the afternoon so I could spend one full day in downtown Denver to revisit some of the sites. My cousin's son, Ian, lives, works and extensively plays in Colorado, when he is not skiing, biking, rafting or camping elsewhere around the country. So, I made a last-minute call to see how he was doing and to see if he was around. He texted right back, making it very clear he had no intention of driving over from Colorado Springs to hang out with his mom's 58-year-old cousin on a Monday night. But, he did tell me to call him next time I was back in town. So, I took the train into the city from the airport, checked into the Hostel Fish Hotel and then walked down to Biker Joe's for a few hot dogs before enjoying a full night's rest. I spent most of the next day walking around checking out old parts of the city and watching kayakers at Confluence Park.

My Second Trip

The second time I found myself in downtown Denver was in the 1980's. My older brother Tim and I flew to Denver in a 1959 Single engine, 250 horsepower, four seat, constant speed propeller, retractable landing gear, Piper Comanche that my father had purchased for traveling to his local seminars. I flew many evening or early morning flights into Boston, Buffalo, Cleveland, Washington DC, Philadelphia or Detroit to drop off or pick up my dad from one of his seminars. He still had business interests in Canada at the time so in 3 hours after taking off from Kutztown airport you could be eating lunch in downtown

Toronto, after having landed at the city's lakefront island airport. Peter, Timothy and myself all became pilots before we were 25. See at the time Tim and I were flying to Denver to attend one of the notorious "Hazmat trade shows". After two days of flying we landed at the old Denver airport. We took a cab downtown to the show where we spent most of our time on the trade show floor being mocked for our youth and inexperience. There, only to add insult to injury, we were continually reminded that the two of us together would never fill our father's shoes.

The First Time

The first time I laid my eyes on downtown Denver was when I was still in my teens. This trip, Matt, my youngest brother, and I met up with our father, Bob, who was on his seminar route through the southwest. Matt was bigger, stronger, faster and braver than any of my siblings. Matt was at the time attending Notre Dame high school in Wilcox, Saskatchewan on a hockey scholarship. He was an enforcer who always took it as well as he gave it. We met Dad and his car, which he had been driving over the last few months, as he worked his way across the country running his seminars. Driving my dad's Buick LeSabre through the high plains of the Southwest, late at night on our way from Denver to Albuquerque, while listening to my dad's "8-track" tape player is something I will never forget.

The reason that I decided to talk about the three rules on running seminars, my three brothers, my three trips to Denver and the three days I recently spent around the city of Denver is only to remind you that you only have "three calendar days" to move any excess hazardous waste you generate in your satellite accumulation area, (over 55 gallons or one quart of acute hazardous waste) into your Central Accumulation Area or off-site for disposal.

That's right, in the new Hazardous Waste Generator Improvements Rule, EPA has doubled down by clarifying the satellite accumulation container three day rule by rewording the requirements. It has been changed from "three days" to "three consecutive calendar days", with good reason. I guess some folks didn't realize that unless your State says otherwise, under the federal requirements, when a generator decides to take "Satellite Accumulation" they were not required to move or date their satellite accumulation hazardous waste containers, provided that they never exceed the 55 gallons or one quart acute waste in the satellite accumulation area. This has not changed. Here's what's changed, now under the new EPA hazardous waste generator improvements rule clarifications, generators will be required to date the excess waste containers with "their" start dates. Not the containers holding the 55 gallons or 1 quart of acute waste, but the excess waste containers containing over these amounts. This is of course, in addition to the new requirement to mark containers under satellite accumulation with the words "Hazardous Waste" and words that identify the hazards of the contents inside the container.

Years ago, when EPA still had a hazardous waste hot line, I had a discussion, a heated discussion, with a specialist about the excess satellite accumulation container requirements. I don't think I will ever forget the hour I spent on the phone as he went through 40 CFR, the federal register's final rule, the proposed rule and finally the EPA letters of interpretation. Finally, I was simply told by the special-

ist, in a frustrated tone, that if I didn't move the 55 gallon drum or the container holding the one quart of acute hazardous waste out of the satellite area once it was full, within 3 days, EPA would cite the generator regardless of what the regulations stated.

Most generators didn't seem to realize that under the old requirements, a generator could accumulate and store thousands of gallons of hazardous waste in a satellite accumulation area as long as they moved the excess waste, over the first 55 gallons or over the one quart of acute waste, out of the satellite accumulation area or off-site within three days. Many years ago, I had a customer tell me that they had done just that for a kiln clean out. Why? Because they didn't want to maintain what is now referred to as a large quantity generator Central Accumulation Area's (CAA) additional storage requirements. Because these satellite accumulation containers were never moved to a central accumulation area, they were not subject to the required annual training, the AA, BB and CC for Air emission requirements or the 265 Subpart C and D plans. How? Simply by shipping the excess hazardous waste off-site, directly from the satellite accumulation area within 3 days, hence bypassing the CAA requirements. I didn't believe it at the time, which was the reason for my call to the EPA Hotline in the first place.

Regardless of all that, what now is not up for discussion, is what is meant by three days! Ever since Satellite accumulation waste was incorporated under SARA, back in 1984, the Agency was continually being asked what was meant by "three days." Was it to mean three business days, three calendar days or 72 hours? So, it seems the Agency has now gone the extra mile to clarified this term.

See originally when Satellite Accumulation was introduced under SARA, EPA proposed using the term "72 hours". They quickly realized that to determine the 72 hours it would require placing both the date and time of day on containers containing excess accumulation. So back then in the final rule EPA switched the wording to "three days", releasing generators from marking the time but not the date on containers holding waste in excess of the 55 gallons of non-acute hazardous waste or 1 quart of acute hazardous waste.

Well, in this newest rule, EPA has now decided to replace the term "three days" with not "three calendar days" nor "three business days" or "three working days" as discussed in the preamble, but with the term "three consecutive calendar days".

Many generators felt that the term "three days" meant "three business days" or "three working days", but apparently this is not the case, which is why in the proposed rule more than one commenter replied that EPA should allow "three working days". Commenters stated that work schedules, shut downs for short periods, civic and religious holidays or 4 day work weeks during seasonal slowdowns could present some problems with compliance with the "three consecutive calendar days". Unfortunately EPA did not repent: generators will now have only "three consecutive calendar days" to remove excess hazardous waste from their satellite accumulation areas.

The new Hazardous Waste Generator Improvements Rule is comprised mostly of clarifications, not changes. I was led to believe by EPA that there are a total of 53 separate clarifications and approximately seven clear changes in the new rule. Which leads me to the opinion that the states will not have to authorize the 53 clarifications, but, only seven of what are considered to be new requirements.

I hope this blog has helped you understand, maybe just a little bit better, some of the challenges when taking the satellite accumulation exception with its excess hazardous waste container requirements. I sure hope to see you at one of the seminars starting in September where we will discuss and explain these new requirements. But if not, at least order a copy of the brand-new 2017/ 2018 Hazardous Materials, Substances and Wastes Compliance Guide which contains the new 40 CFR Hazardous Waste Generator Improvements Rule and the new 49 CFR Hazardous Material Transportation HM-215 N regulations.

If you're in trouble right now, email or call me with any questions on the hazardous materials, hazardous wastes, hazardous chemicals and hazardous substances requirements. I might be able to straighten you out.

Thank you for your comments, support and readership.

Robert J. Keegan
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