

# **THE HAZARDOUS WASTE GENERATOR IMPROVEMENT RULE:**

## **The Good, the Bad and the Unexplained**

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# Legal Disclaimer

- **This presentation is provided for informational purposes only and should not be construed as legal or other professional advice on any subject matter.**
- **You should not act or refrain from acting on the basis of any content included in this document without seeking advice specific to your circumstances from an attorney or environmental professional.**

## ***“Regs. per Ken Ede”***

- ❖ These are my recommendations!
- ❖ These are not law or regulations!!
- ❖ But they are just my recommendations to you.....
- ❖ I have been working in the Environmental, Safety, DOT arena since 1984!
- ❖ Therefore, every mistake that could be made, I have made it!
- ❖ Learn from my mistakes!

# Agenda

- The final rule promulgates over **60 revisions** and new provisions to the hazardous waste generator regulatory program
- Due to time constraints, I am only going to address the **top 10 changes**

# Hazardous Waste Generator Improvements Rule

- 7.85 + year itch!, ≈60 days before leaving office, FR Nov. 28, 2016



**President Obama**

January 20, 2009 – January 20, 2017



**Gina McCarthy**  
**Administrator**



**Jim O'Leary**  
**Author**



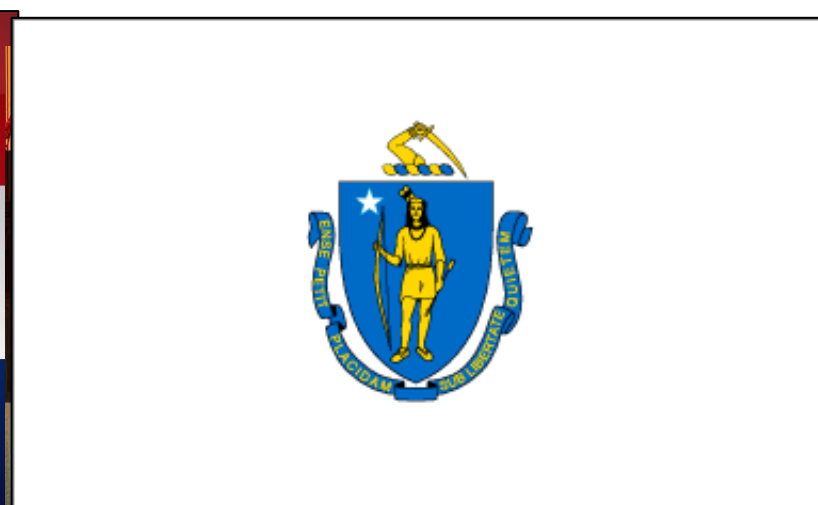
- Interesting point, other than **Iowa and Alaska**, all other States can make hazardous waste regulations as strict as they want
- **There is no limit!**
- Therefore, under current law, a State could make a “waste” paper clip a hazardous waste!
- Great for industrial-friendly States like Oklahoma!



## Industrial-unfriendly States



*Ense petit placidam sub libertate quietem*





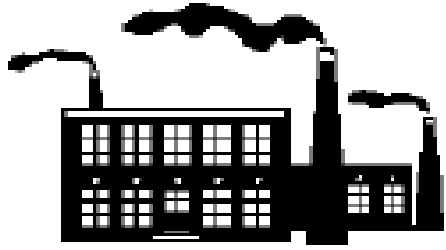


# The Good, the Bad and the Unexplained

➤ 1<sup>st</sup> “The Good”

# Change #1 RCRA: The Three Players: Previous

Generator ⇒ Transporters ⇒ TSDF

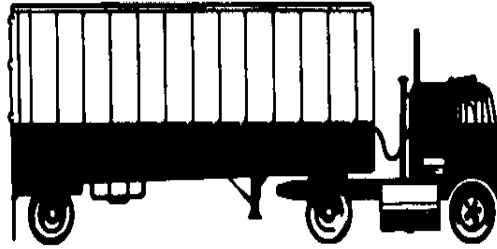


EPA

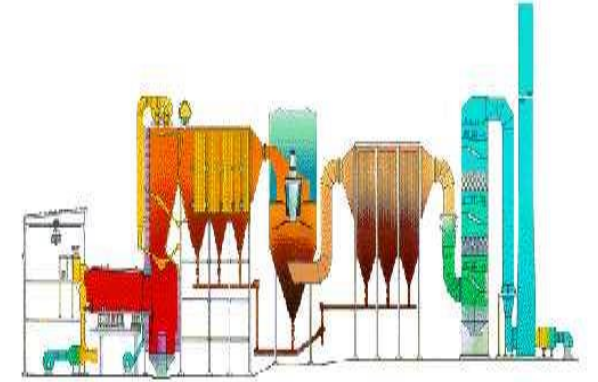
Large Quantity Generator:  
(LQG)

Small Quantity Generator:  
(SQG)

Conditionally Exempt Small Quantity Generator  
(CESQG)



DOT



EPA

Part A: Interim Status  
Part B: Final Permit

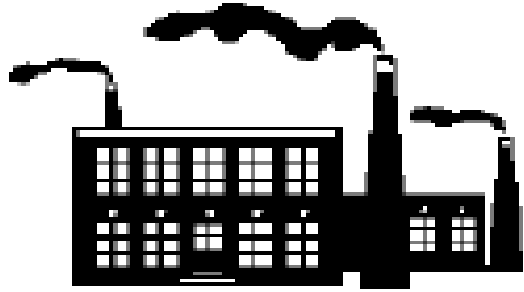
Treats = Changes Chemical, Physical or  
Biological Nature of Waste

Stores = Holds temporarily until doing  
something else with the  
waste

Disposes = Destroys (incineration, etc.),  
or into a permitted landfill

# Change #1 RCRA: The Three Players: Today

**Generators**



EPA

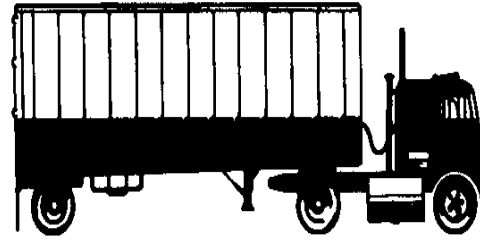
Large Quantity Generator:  
(LQG)

Small Quantity Generator:  
(SQG)

**Very Small Quantity Generator:  
(VSQG)**



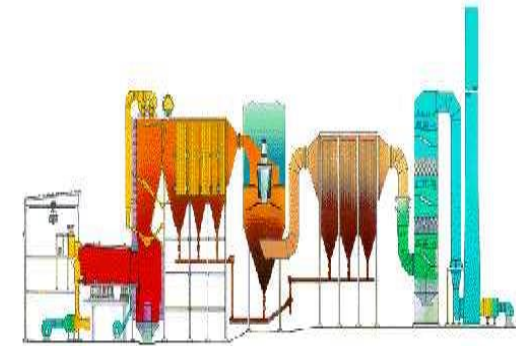
**Transporters**



DOT



**TSDF**



EPA

Part A: Interim Status

Part B: Final Permit

Treats = Changes Chemical, Physical or Biological Nature of Waste  
Stores = Holds temporarily until doing something else with the waste  
Disposes = Destroys (incineration, etc.), or into a permitted landfill

## #2 Reorganization of the CFR for SQG

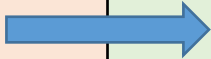
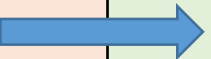
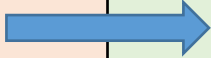
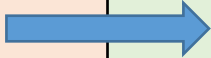
Regulation	Previous citation	New citation	Comment
Definition of Small Quantity Generator	§ 262.34(d)	§ 260.10	Moved into new definition of SQG
Accumulation Time Limit	§ 262.34(d)	§ 262.16(b)	Moved
Accumulation Limit	§ 262.34(d)(1)	§ 262.16(b)(1)	Moved
Accumulation in Containers	§ 262.34(d)(2) (references part 265 subpart I)	§ 262.16(b)(2)	Duplicated from part 265
Marking of Tanks and Containers	§ 262.34(d)(4) (references § 262.34(a)(2) and (3))	§ 262.16(b)(6)	Copied from § 262.34 with some changes
Preparedness and Prevention	§ 262.34(d)(4) (ref. part 265 subpart C) & 262.34(d)(5)	262.16(b)(8) & (9)	Duplicated from part 265 and moved from § 262.34
Transporting > 200 Miles	§ 262.34(e)	§ 262.16(c)	Moved from § 262.34
Accumulation Time Limit Extension	§ 262.34(f)	§ 262.16(d)	Moved from § 262.34
Rejected Loads	262.34(m)	§ 262.16(e)	Moved from § 262.34
Episodic Generation	New provision	Part 262 subpart L	New provision

## #2 Reorganization of the CFR for regulations

<b>Regulation</b>	<b>Previous citation</b>	<b>New citation</b>	<b>Comment</b>
<b>Definitions of Generator Categories</b>	<b>§§ 260.10, 261.5 &amp; 262.34</b>	<b>§ 260.10</b>	<b>Previous definition of SQG in § 260.10 was outdated. Generator categories were based on §§ 261.5 &amp; 262.34</b>
<b>Hazardous Waste Limits for VSQGs</b>	<b>§ 261.5(a) &amp; (e)</b>	<b>§ 260.10</b>	<b>Included in the new definition of VSQG</b>
<b>Purpose, Scope, and Applicability</b>	<b>§ 262.10</b>	<b>§ 262.10</b>	<b>Not moved, but expanded significantly</b>
<b>Hazardous Waste Determination &amp; Recordkeeping</b>	<b>§§ 262.11 &amp; 262.40(c)</b>	<b>§ 262.11</b>	<b>Content in § 262.11 is expanded and § 262.40(c) is incorporated.</b>
<b>Generator Category Determination</b>	<b>§ 261.5(c), (d), &amp; (h)–(j)</b>	<b>§262.13</b>	<b>New section that explains how to count hazardous waste to determine generator category</b>
<b>EPA Identification Numbers</b>	<b>§ 262.12</b>	<b>§ 262.18</b>	<b>Re-notification requirements are also in this section</b>
<b>Landfill Ban for Liquids</b>	<b>§ 258.28</b>	<b>§ 262.35</b>	<b>For SQGs and LQGs.</b>



## #2 Reorganization of the CFR for all Generators

Topic	Acronym	Presently	New
Very Small Quantity Generators	VSQG	40 CFR 261.5(a) 	40 CFR 262.14
Satellite Accumulation Areas	SAAAs	40 CFR 262.34(c) 	40 CFR 262.15
Small Quantity Generators	SQGs	40 CFR 262.34(d) 	40 CFR 262.16
Large Quantity Generators	LQGs	40 CFR 262.34(a) 	40 CFR 262.17

# **#3: RENOTIFICATION FOR SQGS & LQGS**

- **SQGs must re-notify every four years beginning September 1, 2021**
- **Renotifications will be due every four years on September 1st of that year.**
- **LQGs re-notify when they submit their biennial report (every March 1st of even numbered years)**

# **40 CFR § 262.12**

## **EPA Identification Numbers**

- **Quickest way to obtain an EPA ID number**
- **Quickest way to make changes**
- **Quickest way to request Episodic Events**

➤ **MyRCRAID**

**<https://rcrainfo.epa.gov/rcrainfoprod/action/secured/login>**

## #4: Definition of Central Accumulation Area (40 CFR 260.10)

- EPA codified the term Central Accumulation Area (CAA)
- Over the years, generators have used different terms to refer to these on-site generator accumulation areas, including: “*generator accumulation area*,” “*hazardous waste accumulation area*” “*less-than-90-day areas*,” “*90-day pad*,” “*less-than-180-day areas*”
- The word Central does not mean in middle of your facility

# # 5: Quick Reference Guide (LQGs only)

- Rules require LQGs submitting new contingency plans or making updates to also include a “Quick Reference Guide” (i.e.) Executive Summary
- Two Contingency Plan approaches!

**Contingency Plan:  
More is better**





# Environmental Incident Call Out List

**CALL ALL NUMBERS LEFT TO RIGHT BEFORE PROCEEDING TO NEXT CONTACT**

**START**



**Office Number ➡ Cell Number ➡ Alt. Number**

<b>1</b>	<b>Environmental Services-Supervisor</b> Jane Doe (Incident Commander)	(918) 555-1111	(918) 444-1111	(918) 333-1111
<b>2</b>	<b>Environmental Engineer</b> Jim Doe (1st Alternate Incident Commander)	(918) 555-2222	(918) 444-2222	(918) 333-2222
<b>3</b>	<b>Environmental Engineer</b> Jack Doe (2nd Alternate Incident Commander)	(918) 555-3333	(918) 444-3333	(918) 333-3333
<b>4</b>	<b>Environmental Engineer</b> Betty Doe (3rd Alternate Incident Commander)	(918) 555-4444	(918) 444-4444	Use Cell Number
<b>5</b>	<b>Environmental Services-Manager</b> John Doe	(918) 555-5555	(918) 444-5555	Use Cell Number
<b>6</b>	<b>Environmental Engineering-Manager</b> Kim Doe	(918) 555-6666	(918) 444-6666	Use Cell Number
<b>7</b>	<b>Environmental Services-Crew Chief</b> Steph Doe	(918) 555-7777	(918) 444-7777	Use Cell Number
<b>8</b>	<b>Environmental Services-Crew Chief</b> Anita Doe	(918) 555-8888	(918) 444-8888	Use Cell Number

Used by permission from Mr. David W. Smith, CHMM

# Quick Reference Guide

**Must contain the following 8 elements:**

- 1. Types/names of hazardous waste and associated hazards**
- 2. Estimated maximum amounts of hazardous wastes**
- 3. Hazardous wastes requiring unique/special treatment**
- 4. Map showing where hazardous wastes are generated, accumulated or treated at the facility**
- 5. Map of facility and surroundings to identify routes of access and evacuation**
- 6. Location of water supply**
- 7. Identification of on-site notification systems**
- 8. Name of emergency coordinator(s) or listed staffed position(s) and 7/24-hour emergency telephone number(s)**

# #6 Episodic Generation (GREAT)

- 40 CFR Part 262, Subpart L allows both **VSQGs** and **SQGs** to maintain their existing generator category in the event of planned or unplanned episodic generation events
- Therefore, these generators do NOT have to count hazardous waste managed as part of the episodic event when making their monthly generator-category determination (§262.13(c)(8))

## ***What is an “Episodic Generation”***

**“...an activity or activities, either planned or unplanned, that does not normally occur during generator operations, resulting in an increase in the generation of hazardous wastes that exceeds the calendar month quantity limits for the generator's usual category”**

# Planned vs. Unplanned Episodic Events

## Planned Episodic Event:

- An episodic event that the generator planned and prepared for, including regular maintenance, tank cleanouts, short-term projects, and removal of excess chemical inventory

## Unplanned Episodic Event:

- An unplanned event that the generator did not plan or reasonably did not expect to occur, including production process upsets, product recalls, accidental spills, or “acts of nature,” such as a **tornado**, hurricane, or **flood**



**Regs. Per Ken Ede**

**ODEQ**

**Kevin Courtney**

**Environmental Programs Specialist**

**Hazardous Waste Compliance**

**Land Protection Division**

**Oklahoma Department of Environmental Quality**

**[Kevin.Courtney@deq.ok.gov](mailto:Kevin.Courtney@deq.ok.gov)**

**(405)702-5194**

# NOTIFICATION: Episodic Generation

- **Regs per Ken Ede:**
- **If I was a SQG or VSQG, I would register electronically**
- **MyRCRAID**

<https://rcrainfo.epa.gov/rcrainfoprod/action/secured/login>

- **Rather than wait until it is too late, I would register tomorrow**
- **No more snail mail**

# The Good, the Bad and the Unexplained

➤ **2nd “The Bad”**

# # 7 CENTRAL & SATELLITE ACCUMULATION AREAS

## Labeling

**VSQG: 40 CFR 262.232(a)(4)(iii)**  
**LQG & SQG: 40 CFR 262.15.**

**Mark the container:**

**“HAZARDOUS WASTE”**

➤ **And the *“other words that identify the contents of the containers”***

***“WASTE PAINT THINNER”***

**AND....**

## Either one of four different labeling options

1. An indication of the RCRA hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic) OR
2. A hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding) OR
3. A hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200 OR
4. A chemical hazard label consistent with the National Fire Protection Association (NFPA) code 704



## Why Label? (Federal Register Volume 81, Number 228)

**The regulatory changes as to the marking and labeling for waste accumulation units are designed to enhance three critical areas:**

- 1. Risk communication,**
  - 2. Emergency preparedness and prevention, and**
  - 3. Accuracy of hazardous waste determinations**
- **The goal was to inform non-EHS professionals of the risks associated with the contents of the drum!**

# GOAL: TO INFORM PROFESSIONALS



# GOAL: TO INFORM NON-EHS PROFESSIONALS



**FIRE SPRINKLER SYSTEM**



# SATELLITE ACCUMULATION AREAS (SAA)

## Labeling as per Department of Transportation

2. A hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding)

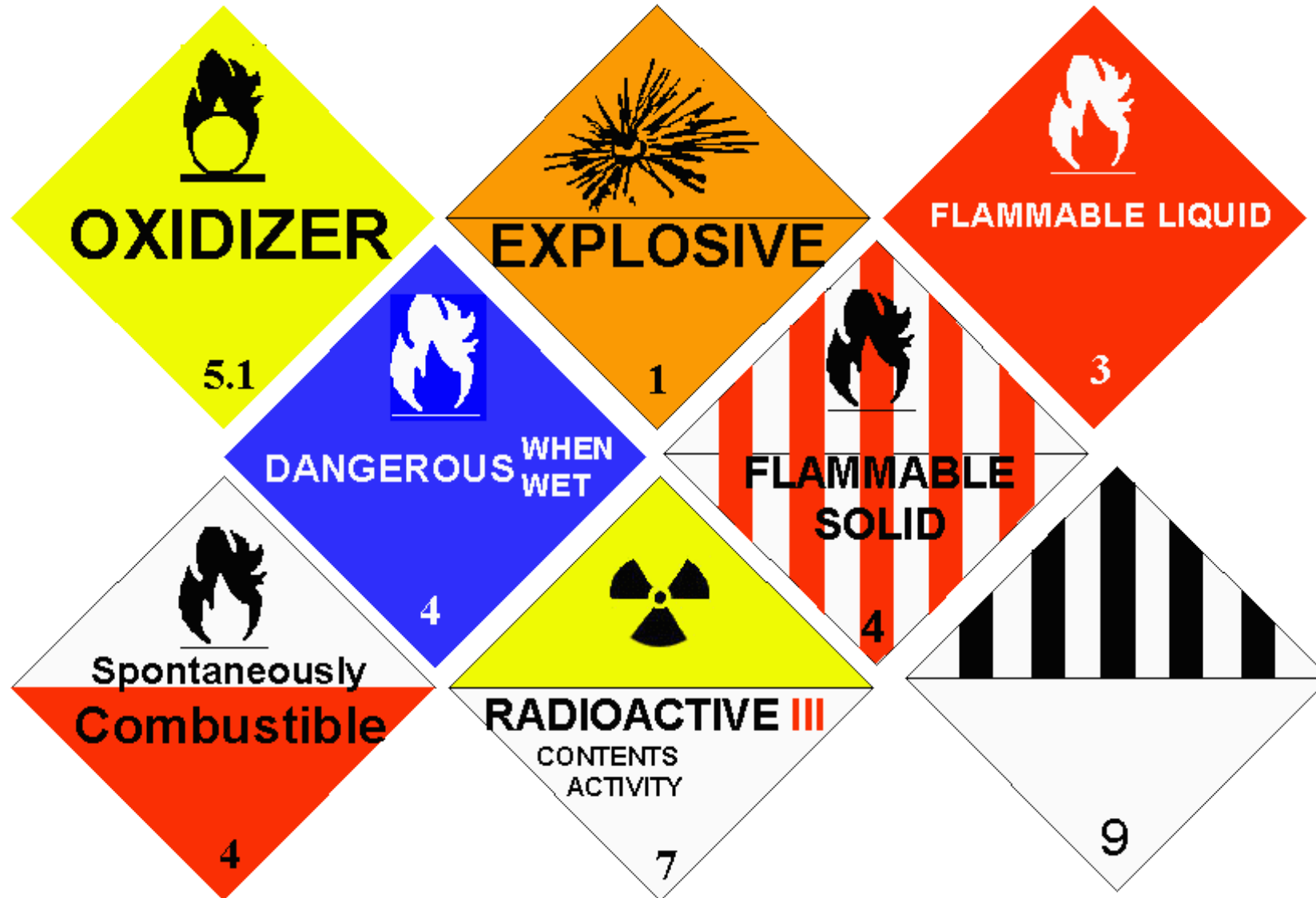
The problem is that  
I always forget  
what these mean??

But this is my  
second favorite  
option





# Labeling as per Department of Transportation



## Labeling as per OSHA (GHS: Globally Harmonized System)

3. A hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200

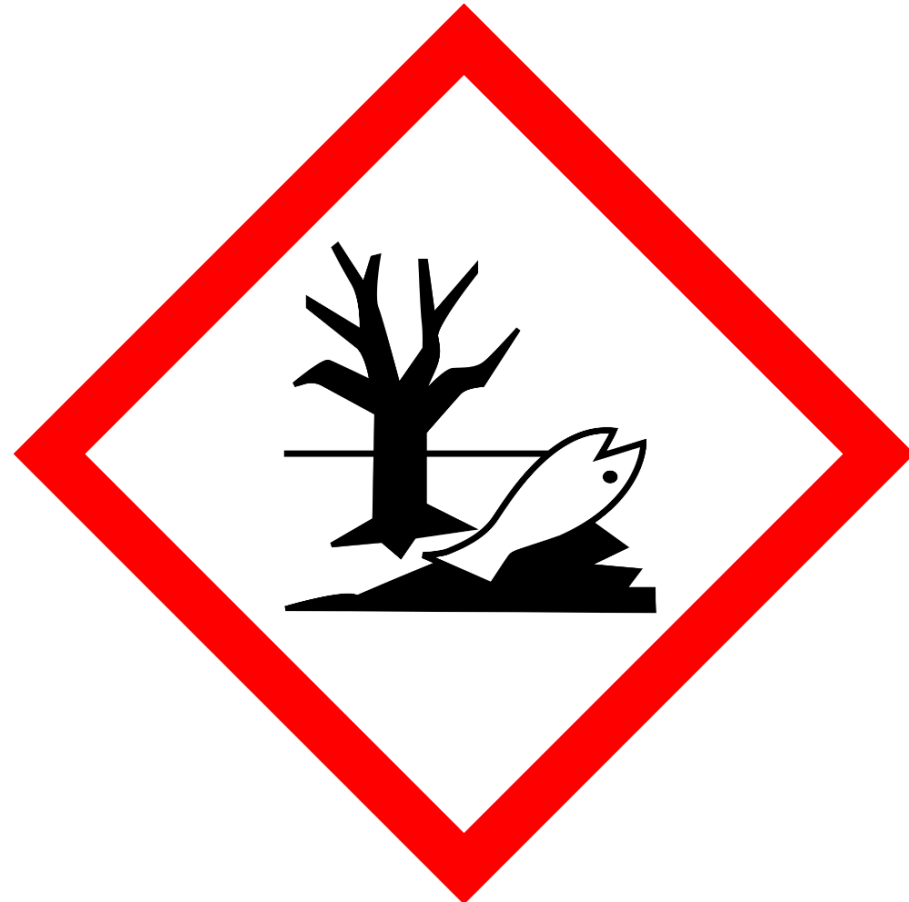
The problem is  
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# SATELLITE ACCUMULATION AREAS (SAA)

Labeling as per OSHA (GHS: Globally Harmonized System)

2. A hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200





# SATELLITE ACCUMULATION AREAS (SAA)

**Labeling as per OSHA (GHS: Globally Harmonized System)**

2. A hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200



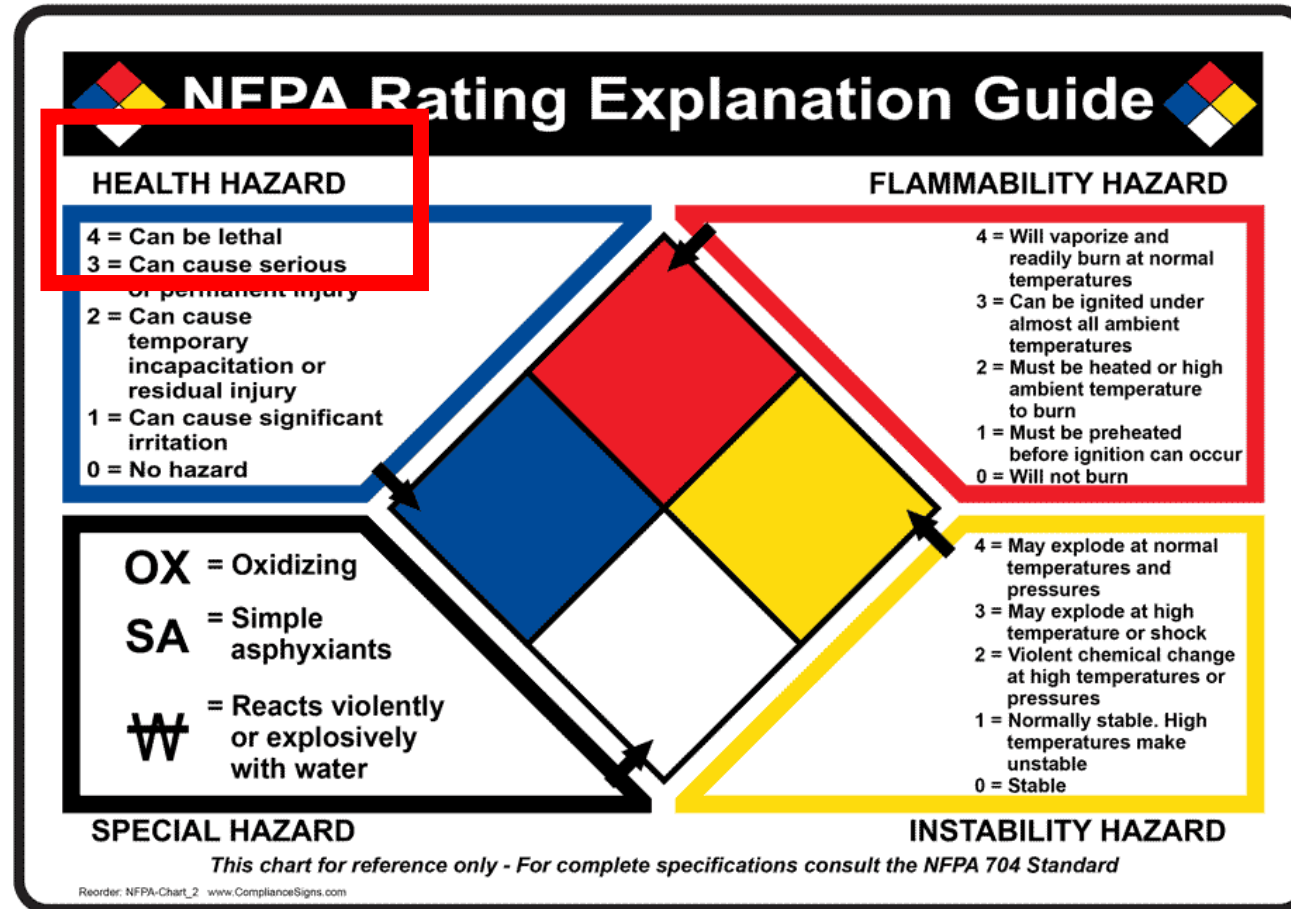
## Labeling as per OSHA (GHS: Globally Harmonized System)

- In addition, from a legal perspective; the (m)sds only describes the dangers associated with the **virgin products**, not the waste!
- Therefore, **You** are now accepting responsibility that you are aware of all the health hazardous associated with a hazardous waste!
- **Unless you are a degreed toxicologist, be very careful accepting this legal responsibility**

# SATELLITE ACCUMULATION AREAS (SAA)

## Labeling as per NFPA

4. A chemical hazard label consistent with the National Fire Protection Association (NFPA) code 704



# National Fire Protection Association (NFPA) code 704)

- Again, from a legal perspective; the (m)sds only describes the dangers associated with the **virgin products**, not the waste!
- Therefore, **You** are now accepting responsibility that you are aware of all the health hazardous associated with a hazardous waste!
- **Unless you are a degreed toxicologist, be very careful accepting this legal responsibility**

# My favorite: RCRA Labeling

1. An indication of the RCRA hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic

**Advantage: Generally, this is already been completed!**

**For example: Ignitability: D001, Corrosivity: D002, Reactivity: D003, Toxicity: D004 → D043**

# Labeling: My Preference: RCRA

## ***“Regs per Ken Ede”***

**Every hazardous waste drum label with the following:**

- 1. Mark the container: “HAZARDOUS WASTE”**
- 2. Identify the contents: “WASTE PAINT THINNER”**
- 3. List the applicable hazardous waste characteristic(s):**

**(Ignitability: D001, Corrosivity: D002,  
Reactivity: D003, Toxicity: D004 → D043)**

# Satellite Accumulation Drum Label (w/o date)

## HAZARDOUS WASTE



**CONTENTS:** WASTE PAINT THINNER

**WASTE CODES:** D001, D035, F003, F005

**ACCUMULATION STATE DATE:**

**HANDLE WITH CARE!**

**HAZARDS:** (check all that apply)

**Ignitable**



**Corrosive**



**Reactive**



**Toxic**



Label used by permission from Mr. David W. Smith, CHMM



# Central Accumulation Drum Label (w date)

## HAZARDOUS WASTE



**CONTENTS:** WASTE PAINT THINNER

**WASTE CODES:** D001, D035, F003, F005

**ACCUMULATION STATE DATE:** October 3, 2022

**HANDLE WITH CARE!**

**HAZARDS:** (check all that apply)

**Ignitable**



**Corrosive**



**Reactive**

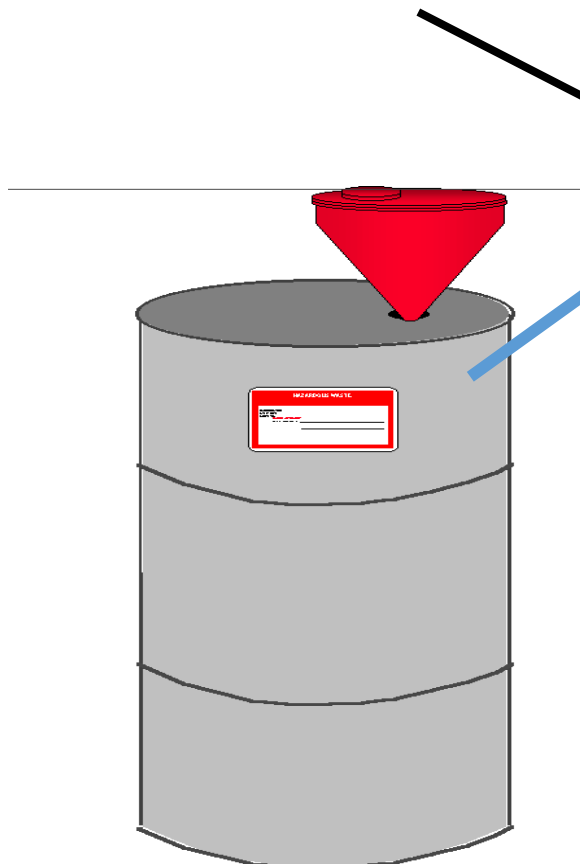


**Toxic**



Label used by permission from Mr. David W. Smith, CHMM

**Note: Date is  
blank until  
container is  
full**



<b>HAZARDOUS WASTE</b>		 Container ID
CONTENTS:	<b>WASTE PAINT THINNER</b>	
ACCUMULATION START DATE:		
WASTE CODES:	<b>D001, F003, F005, D035</b>	
CONTAINS:	<input checked="" type="checkbox"/> Ignitable:	<input type="checkbox"/> Corrosive: <input type="checkbox"/> Reactive: <input checked="" type="checkbox"/> Toxic
(Check all that apply)		
<b>HANDLE WITH CARE!</b>		

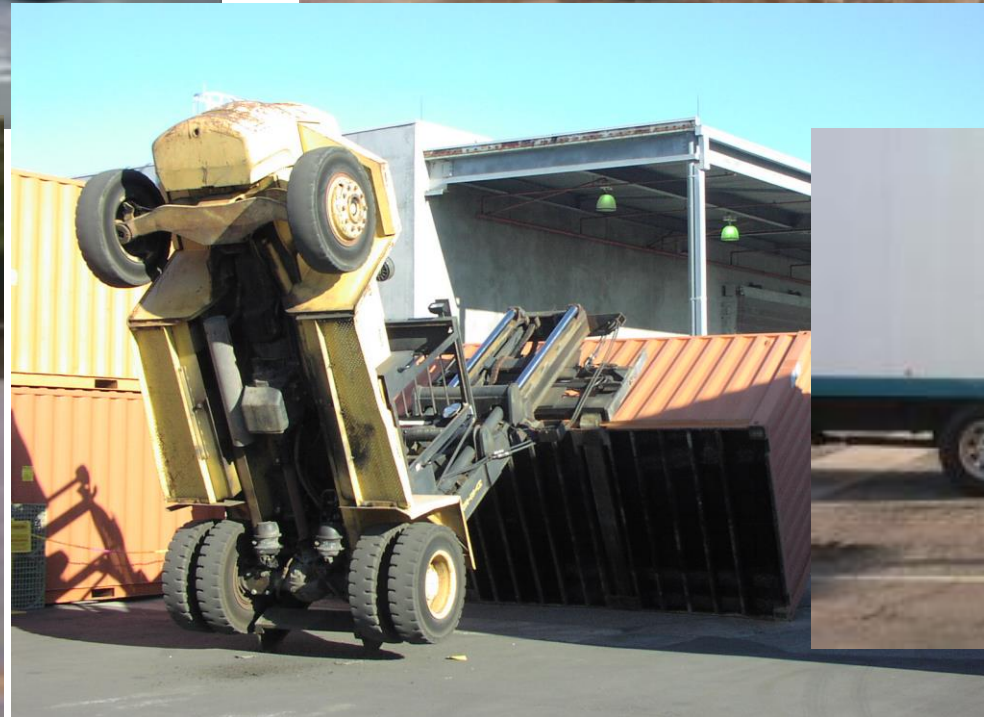
# #8 CONSOLIDATE WASTE AT A LQG

- VSQG can “consolidate” their waste at an LQG as long as they are both under the control of the same person (same ownership)
- VSQG standards: Marks and labels waste containers with “**Hazardous Waste**” and the hazards of the contents
- No hazardous waste manifest is required and hazardous waste transporters do not have to be used
- Problem: Regs per Ken Ede
- The more you handle the drum, the higher the probability it will leak

# **Forklift-related injuries: 2020 (COVID)**

- **Forklift-related injuries in 2020:**
- **78 work-related deaths and**
- **7,290 nonfatal injuries**

# VSQG Waste Consolidation at LQGs





# The Good, the Bad and the Unexplained

➤ **The Unexplained?**

# Moving or Closing your Central Accumulation Area (CAA)

- You are a large quantity generator of HW

## Three Scenarios:

### A: Close just one CAA

- You have two Central Accumulation Areas at your facility (North & South)
- Business has been poor, therefore you want to consolidate both CAAs into one
- **OR**

North Central  
Accumulation Area



South Central  
Accumulation Area



# Moving or Closing your Central Accumulation Area (CAA)

**B. Your company just wants to move a CAA**

○ **OR**

Central  
Accumulation  
Area

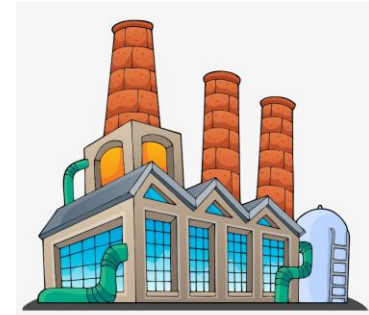


# Moving or Closing your Central Accumulation Area (CAA)

**C. Close all the CAAs and sell your entire facility**

**❖ What are the legal issues regarding these scenarios?**

Central Accumulation  
Area



## **Moving or Closing your Central Accumulation Area (CAA)**

- **A large quantity generator must perform one of the following when closing a waste accumulation unit:**
- **Notification for closure of the facility:**
  - 1. Notify EPA using form 8700-12 no later than 30 days prior to closing the facility**
  - 2. Place a notice in the operating record within 30 days after closure identifying the location of the unit within the facility;**
  - 3. After “Clean Close” of the area, you must notify EPA using form 8700-12 within 90 days after closing the facility that it has complied with the closure performance standards**

# The Unexplained

- What is “*clean closure*?”
- “Removes or decontaminates **all** contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units including containment system components (pads, liners, etc.), *contaminated soils and subsoils, bases, and structures and equipment contaminated with waste.....*”
- If the facility **cannot** meet the closure performance standards (clean closure), the generator must notify EPA using form 8700-12 that it will close as a **landfill!!**

# LQG Closing a **Central Accumulation Area CAA**

- And perform **post-closure care** in accordance with the closure and post-closure care requirements that apply to landfills (40 CFR 265.310)
- In addition, for the purposes of closure, post-closure, and financial responsibility, and the generator must meet all of the requirements for landfills specified in subparts G and H of 40 CFR part 265.
- 265.117 Post-closure care and use of property:
- “...must begin after completion of closure of the unit and **continue for 30 years after that date**”

# LQG Closing a **Central Accumulation Area CAA**

- In addition, may need to install:
- Groundwater monitoring wells
- Both upgradient and downgradient from the container area
- If groundwater is contaminated, may need to monitor groundwater for **30 years or longer** during a post-closure care groundwater monitoring program, etc.

# #9 The Unexplained

- Place a notice in the operating record within 30 days after closure identifying the location of the unit within the facility
- Problem: Lack of legal precedent
- Generators of hazardous wastes do NOT have an operating permit
- Only TSDFs have operating permit



# # 10 The Unexplained

- **What is “clean closure?”**
- **Today Chemists can analyze to parts per quadrillion (PPQ)**
- **Water: Picogram per liter (pg/L)**
- **Soil: Picogram per kilogram (pg/kg)**
- **If we find 1 pg/kg of toluene in the soil, does this now make the CAA a landfill?**

# ODEQ & OSU

- ❖ Just like the PFAS sampling guidelines, ODEQ & OSU will partner to develop guidelines for the closure of Central Accumulation Areas
- ❖ Cost impact to taxpayers: Zero
- ❖ Cost impact to Saba: Another lunch







**Thank you!**

