



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

August 10, 2021

OFFICE OF  
LAND AND EMERGENCY  
MANAGEMENT

**MEMORANDUM**

**SUBJECT:** Regulatory Options for Addressing the Temporary Backlog of Containerized Hazardous Waste Needing Incineration

**FROM:** Carolyn Hoskinson, Director  
Office of Resource Conservation and Recovery

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CAROLYN HOSKINSON  
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**TO:** Land, Chemicals and Redevelopment Division Directors, Regions 1–10

*Purpose*

The purpose of this memorandum is to communicate existing options under the Resource Conservation and Recovery Act (RCRA) regulations for hazardous waste generators and permitted hazardous waste treatment, storage, and disposal facilities (TSDFs) to address the temporary backlog of containerized hazardous waste destined for incineration.

*Background*

In early June 2021, EPA became aware that some commercial hazardous waste incinerators were informing their customers (hazardous waste generators) that they would no longer accept containerized hazardous waste designated for incineration, due to a backlog at their facilities. This presents a problem for hazardous waste generators because they are only allowed to accumulate hazardous waste on-site for a maximum of 90 days for large quantity generators (LQGs) or 180 days (or 270 days if the waste must be transported a distance of 200 miles or more) for small quantity generators (SQGs).<sup>1</sup> Because many commercial incinerators are currently not accepting containerized hazardous waste that must be incinerated to meet the land disposal restriction treatment standards, some hazardous waste generators are finding it difficult to locate any permitted TSDFs to which they may send their hazardous waste within the regulatory time frames.

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<sup>1</sup> LQGs and SQGs that accumulate hazardous waste for less than their respective time limits are not required to obtain a RCRA storage permit in accordance with §§ 262.17(a) and 262.16(b). However, they may accumulate hazardous waste onsite beyond the accumulation time limits if they obtain a storage permit or request an accumulation time limit extension and meet the criteria in §§ 262.17(b) and 262.16(d). The conditions in the permit will dictate what types of hazardous waste can be stored onsite and for how long. Some TSDFs may also generate hazardous waste and thus, the options available for generators may also apply to TSDFs for their own generated hazardous waste.

Upon learning of the incinerator backlog, EPA took action to understand the scope and duration of the problem, determine the root causes, and investigate any potential regulatory solutions. As of late July, EPA heard from over 20 states that they received requests from hazardous waste generators for extensions to the accumulation time limit, and some states have begun receiving requests for second extensions.

In our discussions with representatives from the commercial incinerator industry, they cited a number of contributing factors for the backlog including labor shortages affecting both transportation and the incinerators due to the COVID-19 pandemic; winter storms that caused shutdowns in the southern United States; shutdowns for both scheduled and unscheduled maintenance; and increased manufacturing (and resulting increase in waste generation) as the economy recovers from the pandemic. They also indicated that this backlog at incinerators may not fully resolve until the end of the first quarter of 2022.

Given these highly unusual and unique circumstances, the widespread and continued accumulation time limit extension requests states have received from hazardous waste generators, and reports from commercial incinerators anticipating a lengthy timeframe to return to normal operations, we are providing this description of the multiple existing options that are available under RCRA regulations. These options will: 1) help address the burden on hazardous waste generators that have nowhere to send this hazardous waste; 2) provide temporary solutions for RCRA permitted TSDFs, including commercial incinerators, to assist generators with storing the excess waste while the incinerators catch up; and 3) ensure that all hazardous waste in storage is managed in a manner that maintains the protection of human health and the environment. Implementing agencies are critical to ensuring that the options below will be implemented in a manner that maintains sufficient protectiveness.

Further, given the urgency of this situation, EPA encourages regions and states to emphasize to the regulated community that it will be essential that they provide complete information to implementing agencies when requesting to use the regulatory options described below that require approval, so that implementing agencies can act expeditiously to prioritize and evaluate these requests.

#### *Regulatory Options for Hazardous Waste Generators*

The regulations allow SQGs to accumulate hazardous waste onsite for 180 days or less without a permit, provided they comply with the accumulation conditions as described in 40 CFR 262.16(b). However, if the SQGs need to transport their hazardous waste 200 miles or more for off-site treatment, storage or disposal, they can use the self-implementing provision found in the regulations at § 262.16(c) to accumulate hazardous waste up to 270 days. Given the limited number of hazardous waste incinerators and the temporary backlog issue, it is likely that many SQGs could make use of this provision.

In the generator regulations at 40 CFR 262.16(d) and 40 CFR 262.17(b), SQGs and LQGs can submit a request to the authorized implementing agency for accumulation time limit extensions. These provisions are also applicable to permitted hazardous waste TSDFs for hazardous waste that they generate and accumulate onsite. The extensions may be granted to address “unforeseen,

temporary, and uncontrollable circumstances” at the discretion of the authorized implementing agency on a case-by-case basis. Individual extension requests may be granted for a 30-day period. Authorized implementing agencies are in the best position to determine on a case-by-case basis whether consecutive extensions are appropriate, and in some states, this is an established practice. Although federal regulations do not limit the number of extensions, each extension request must meet the criteria in the regulations.

When extensions are granted, EPA expects generators to work with their implementing agency to assess whether additional protective practices are necessary during this temporary situation due to the longer accumulation time and potential increase in the volume of hazardous waste stored onsite. To ensure protection of human health and the environment, EPA recommends that the implementing agency consider site-specific factors (such as whether any adjustments need to be made to a generator’s hazardous waste management) when approving an extension request. In some cases, there may not be any need for specific changes to generator practices beyond common sense precautions; in other cases, adjustments to prevent any potential releases might be necessary, such as increased central accumulation area inspections, temporary secondary containment, and/or alerting local emergency responders that there will be more hazardous waste on-site. EPA also expects generators to continue sending hazardous waste that is not subject to the backlog to a designated facility in accordance with their regulatory accumulation time limits. It should also be noted that any extension does not preclude compliance with any other environmental requirement beyond RCRA that might be triggered by additional waste being stored temporarily. EPA believes that, given the specific conditions present today associated with the incinerator backlog, many generators are likely to be able to demonstrate that they meet these criteria if they are unable to find a facility that can accept the waste.

EPA expects the incinerator backlog to be limited in both duration and in scope. With the information presently available, we do not expect that implementing agencies will need to issue any 30-day generator accumulation extensions beyond March 2022 *for this specific temporary set of circumstances*. If the situation were to persist, it would no longer meet the criterion that the condition is temporary. Implementing agencies should determine whether the criteria are met for each 30-day generator accumulation extension request, and only grant generator accumulation extensions to those generators that can provide proof that they cannot ship their containerized hazardous waste off-site to a permitted incinerator or storage facility in a timely manner due to the temporary incinerator backlog. An example of proof may be letters to the generator from permitted incinerators stating they will not accept the generator’s waste due to the backlog for incinerating containerized hazardous waste.

#### *Regulatory Options for RCRA Permitted Treatment, Storage, and Disposal Facilities*

Backlogged containerized hazardous waste that is generated at RCRA permitted TSDFs, or that may be sent to RCRA permitted TSDFs either for storage or treatment, may be stored at those TSDFs for greater than 90 days assuming their existing RCRA permit allows such storage activities. These facilities may be capable of storing this backlogged containerized waste absent permit modifications if: 1) their RCRA permit allows storage of those types of containerized

wastes and waste codes; and 2) their RCRA permitted container storage capacity will not be exceeded.

TSDFs that have reached their RCRA permitted container storage capacity and would like to request an increase in permitted storage capacity can use relevant permit modification or temporary authorization procedures in 40 CFR 270.42. Modifications to increase container storage capacity would be processed pursuant to either Class 2 or Class 3 permit modification procedures, depending on the requested amount of increase in container storage capacity and whether the containerized waste would require additional or different management practices from those authorized in the permit.<sup>2</sup> Both Class 2 and Class 3 permit modification procedures require public comment on the proposed changes.

TSDFs may also request to implement changes to their allowable container storage practices pursuant to expedited procedures referred to as temporary authorizations. Under regulations at 40 CFR 270.42(e), EPA may temporarily authorize a permittee for certain activities that would be the subject of a Class 2 or Class 3 permit modification.<sup>3</sup> For example, temporary authorizations for Class 2 permit modification activities may be used to, among other things, enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit.<sup>4</sup> Requests for temporary authorization must demonstrate that such activities are compliant with 40 CFR part 264 standards and also meet the qualifying criteria in section 40 CFR 270.42(e) for approval.

Temporary authorizations are limited to 180 days. A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, subject to the criteria in 40 CFR 270.42(e)(4). Permittees that anticipate needing to operate pursuant to a temporary authorization for a Class 2 permit modification activity for greater than 180 days should submit their Class 2 permit modification request in tandem with, or shortly after, they submit their initial temporary authorization request since the reissued temporary authorization constitutes the Director's decision on the Class 2 permit modification. See 40 CFR 270.42(e)(4)(i).

Temporary authorizations and Class 2 and 3 permit modifications generally require review and approval by EPA or the authorized state before TSDFs can operate under the requested changes.

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<sup>2</sup> For example, Appendix I in § 270.42 (see F.1.b) specifies that increases to allowable container storage quantities that are less than 25% of existing permitted capacity would be considered Class 2 permit modifications. Requests for greater than 25% existing permitted capacity would be Class 3. In addition, if the requested increase in capacity involves storage of different wastes in containers, then it would be considered a Class 2 permit modification only if the containerized wastes do not require additional or different management practices relative to those wastes authorized in the permit; otherwise, it would be a Class 3 permit modification. (See Appendix I in 40 CFR 270.42, section F.3.b.)

<sup>3</sup> Temporary authorizations for the first 180 days are not required to go through a public comment period prior to EPA's decision; however, the permittee must send a notice about the temporary authorization request to all persons on the facility mailing list and to appropriate units of state and local governments. This notification must be made within seven days of submission of the authorization request. See 40 CFR 270.42(e)(2)(iii).

<sup>4</sup> For activities covered by Class 2 permit modifications, temporary authorizations may be granted for activities summarized in 40 CFR 270.42(e)(2)(i)(a). Class 3 permit modifications that qualify for temporary authorizations are more limited. Those qualifying requirements are described in 40 CFR 270.42(e)(2)(i)(B).

EPA strongly encourages TSDFs to inform their regulatory agency as soon as possible if they anticipate needing a temporary authorization or permit modification to address the storage of temporarily backlogged containerized HW needing incineration. In addition, TSDFs should also provide timely, complete, and adequate information supporting their requests, including information regarding the urgent nature of the situation. This will best ensure the request, once submitted by the TSDF, will be processed in a timely manner by the regulatory agency. In turn, EPA encourages authorized states to prioritize and expedite review of these requests given the time-sensitive nature of this issue.

To clarify, the aforementioned options address the regulatory processes for permitted TSDFs to request increased storage capacity. Commercial incinerators continue to be limited by the feed rates specified in their permits.

*Use of Emergency Permits at Hazardous Waste Generators or RCRA Permitted TSDFs to Address Excess Containerized Wastes*

Emergency permits may be issued when the Region or state finds that an imminent and substantial endangerment to human health or the environment exists, in accordance with the requirements of 40 CFR 270.61. Emergency permits can address storage of hazardous waste at RCRA permitted TSDFs as well as at hazardous waste generator sites. In general, EPA does not expect storage of excess containerized wastes to present an imminent and substantial endangerment to human health or the environment; however, we acknowledge that rare situations could arise where the use of an emergency permit may be appropriate and implementing agencies should evaluate these situations on a case-by-case basis.

*Conclusion*

EPA is issuing this memorandum to identify existing regulatory options to address the short-term challenges resulting from the backlog of containerized hazardous waste needing incineration. It is important to note that EPA Regions and states authorized to implement the RCRA program are in the best position to make decisions about extensions and temporary authorizations based on the applicable site-specific circumstances. If you have any questions on the applicability of the hazardous waste generator regulations and permitting requirements for these backlogged containerized wastes, contact Mary Beth Sheridan at [sheridan.marybeth@epa.gov](mailto:sheridan.marybeth@epa.gov) or Jeff Gaines at [gaines.jeff@epa.gov](mailto:gaines.jeff@epa.gov).

cc: ASTSWMO  
Environmental Technology Council