

Chapter 851: STANDARDS FOR GENERATORS OF HAZARDOUS WASTE

SUMMARY: This rule establishes standards and requirements for persons who generate hazardous waste.

1. Legal Authority. This rule is authorized by and adopted under 38 M.R.S. §§ 1301 *et seq.*

2. Preamble. It is the purpose of the Department of Environmental Protection, consistent with legislative policy, to provide effective controls for the management of hazardous waste. This rule provides for one of these controls by establishing certain standards which must be met by generators of hazardous waste.

Portions of this rule refer to federal regulations of the United States Environmental Protection Agency (EPA). Unless otherwise specified, the federal regulations referenced are those interim final or final regulations revised as of July 1, 1988, as they appeared in volume 40 of the Code of Federal Regulations (C.F.R.). Where specifically stated, the terms of a referenced federal regulation are hereby adopted as terms of this rule, except that in regulations incorporated thereby, "EPA" shall mean "the Maine Department of Environmental Protection (DEP)"; "Administrator", "Regional Administrator" and "Director" shall mean "the Maine Board of Environmental Protection or its designated representative", and the phrase "treat, store, and/or dispose" shall mean "handle". In addition, where the terms of federal regulations hereby incorporated by reference differ from or are inconsistent with other terms of this Chapter or Chapters 850-860, the more stringent of the requirements shall apply. Other changes to regulations incorporated hereby are as expressly made in this rule.

NOTE: Other requirements for generators appear in other rules of the Department dealing with specific aspects of hazardous waste management. See, for example, Chapter 857, *Hazardous Waste Manifest Requirements*, Chapter 856, *Licensing of Hazardous Waste Facilities*, Chapter 854, *Standards for Hazardous Waste Facilities*, and Chapter 852, *Land Disposal Restrictions*.

3. Definitions

A. Board. "Board" means Board of Environmental Protection.

B. Department. "Department" has the same meaning as in the *Rule Concerning the Processing of Applications and Other Administrative Matters*, 06-096 C.M.R. ch. 2.

NOTE: As used in this rule, "department" may refer to either the "board" or the "commissioner". Under certain circumstances, Maine statutes require that the board, rather than the commissioner, perform duties that may be described or referenced in this rule (e.g. licensing of commercial hazardous waste facilities pursuant to 38 M.R.S. §1319-R; licensing of projects of "statewide significance" pursuant to 38 M.R.S. §341-D).

C. Generator. "Generator" means a person whose act or process produces a waste which is or may be hazardous or whose act first causes a hazardous waste to become subject to regulation.

(1) **Large Quantity Generator.** "Large Quantity Generator" means a generator that does any one of the following:

- (a) Generates 100 kilograms (approximately 27 gallons) or more of hazardous waste per calendar month,
- (b) Generates in a calendar month acute hazardous wastes in quantities greater than those set forth in Section 3(A)(5)(c) of Chapter 850,
- (c) Accumulates more than 600 kilograms (approximately 165 gallons) of hazardous waste at any one time, or
- (d) Accumulates at any one time acute hazardous wastes in quantities greater than those set forth in Section 3(A)(5)(c) of Chapter 850.

(2) **Small Quantity Generator.** "Small Quantity Generator" means a generator that does all of the following:

- (a) Generates less than 100 kilograms (approximately 27 gallons) of hazardous waste per calendar month,
- (b) Accumulates a total of no more than 55 gallons (approximately 200 kilograms) of hazardous waste at any one time, and
- (c) Generates in a calendar month acute hazardous wastes in quantities no more than those set forth in Section 3(A)(5)(c) of Chapter 850 and accumulates at any one time acute hazardous wastes in quantities no more than those set forth in Section 3(A)(5)(c) of Chapter 850.

(3) **Small Quantity Generator Plus.** "Small Quantity Generator Plus" means a generator that does all of the following:

- (a) Generates less than 100 kilograms (approximately 27 gallons) of hazardous waste per calendar month,

(b) Accumulates over 55 gallons (approximately 200 kilograms), but no more than 600 kilograms (approximately 165 gallons) of hazardous waste at any one time, and

(c) Generates in a calendar month acute hazardous wastes in quantities no more than those set forth in Section 3(A)(5)(c) of Chapter 850 and accumulates at any one time acute hazardous wastes in quantities no more than those set forth in Section 3(A)(5)(c) of Chapter 850.

D. Handle. "Handle" means to store, transfer, collect, separate, salvage, process, reduce, recover, incinerate, treat or dispose of.

E. Site. "Site" means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided that the entrance and exit between the properties is at a crossroads intersection and access is by crossing as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered site property.

F. Waste. "Waste" means any useless, unwanted or discarded substance or material, whether or not such substance or material has any other or future use and includes any substance or material that is spilled, leaked, pumped, poured, emitted, disposed, emptied, or dumped onto the land or into the water or ambient air.

G. Double Walled Tank. "Double Walled Tank" means a tank that is enclosed within a second outer wall and that includes secondary containment or a leak detection system that allows for only minimal discharges during leakage for tank piping. An automatic leak detection system monitors the cavity between the inner and outer walls of the double walled tank.

4. Applicability

A. A generator who handles hazardous waste on the site of its generation also must comply with applicable standards and requirements set forth in Chapters 850, 852, 854, 855, 856 and 857.

B. Any person who imports hazardous waste from a foreign country into the State of Maine shall comply with the standards and requirements applicable to generators established in this rule and in Chapter 857.

C. A farmer who generates waste pesticides in his own use which are hazardous waste and who complies with all of the requirements of Section

10 of this rule is not required to comply with other standards in this rule or in Chapters 852, 854, 855 and 856 with respect to such pesticides.

5. Hazardous Waste Determination. A person who generates a waste shall determine if that waste is hazardous by using the following method:

A. First determine if the waste is excluded from regulation under Chapter 850 of the Department's rules.

B. Then determine if the waste is listed as a hazardous waste in Chapter 850 of the Department's rules.

C. If the waste is not listed as a hazardous waste in Chapter 850, the person shall determine whether the waste is identified by characteristic, as a hazardous waste in Chapter 850 by either:

(1) Testing the waste according to the methods set forth in Chapter 850, or according to an equivalent method approved under Chapter 850; or

(2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

6. Identification Numbers

A. No person shall generate hazardous waste without first having obtained a generator identification number specific for the site of waste generation except as provided for a small quantity generator below.

(1) The identification number shall be comprised of the identification number assigned to the generator by the United States Environmental Protection Agency and/or any identifying number or letter as may be assigned by the Department.

NOTE: A generator may obtain an EPA identification number by applying to the Department of Environmental Protection, Bureau of Remediation and Waste Management, State House Station #17, Augusta, Maine 04333-0017 using EPA form 8700-12 "Notification of RCRA Subtitle C Activities".

(2) A small quantity generator as defined by Chapter 851, Section 3(C)(2) of the Department's rules does not require an EPA identification number but is assigned the state identification number ME X020000000.

B. A generator shall not offer his hazardous wastes to any transporter unless that transporter has obtained an identification number and shall not offer hazardous wastes to a waste facility unless the facility has obtained an identification number or is not required to have such a number.

C. A generator shall file a subsequent application (notification) of regulated waste activity to reflect any change in ownership or operation of the site.

NOTE: Changes in operation means changes in operators including tenants who lease a facility from an owner.

7. Transportation Requirements

A. A generator shall not offer hazardous waste in any quantity to a transporter who is not licensed by the State of Maine to transport hazardous waste nor shall he transport the waste himself without a transporter license.

NOTE: Licensing requirements for transporters are set out in Chapter 853, Licensing of Transporters of Hazardous Waste.

B. A generator shall transport, or offer for transport, hazardous waste only to a waste facility for hazardous waste which is authorized to handle the waste under a State program, and if applicable, under the Federal hazardous waste regulatory program.

8. Pre-Transport Requirements

A. Before a generator removes or allows the removal of hazardous waste from the site of its generation, he shall:

(1) Package the waste in accordance with the applicable Federal Department of Transportation regulations on packaging under 49 C.F.R. Parts 173, 178, and 179;

NOTE: "C.F.R." refers to the Code of Federal Regulations, a publication of the United States government in which appear all regulations of the Federal administrative agencies. Copies of the Federal Department of Transportation regulations referred to above may be obtained from the United States Government Printing Office, Washington, DC 20402.

(2) Label each package in accordance with the applicable Federal Department of Transportation regulations on hazardous materials under 49 C.F.R. Part 172;

(3) Mark each package of hazardous waste in accordance with the applicable Federal Department of Transportation regulations on hazardous materials under 49 C.F.R. Part 172;

(4) Mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 C.F.R. 172.304:

HAZARDOUS WASTE--Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the Maine Department of Environmental Protection (1-800-482-0777) or the nearest office of the United States Environmental Protection Agency.

Generator's Name & Address _____

Manifest Document Number _____

NOTE: For State-only hazardous wastes, if they also are not DOT regulated hazardous materials, the requirements of 49 C.F.R. 172.304 do not apply. Thus for any such wastes, instead of following the marking requirements specified above, generators should instead mark each container as follows:

State Hazardous Waste - State Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the Maine Department of Environmental Protection (1-800-482-0777).

Generator's Name & Address _____

Manifest Document Number _____

(5) Placard or offer the initial transporter the appropriate placards according to Federal Department of Transportation regulations for hazardous materials under 49 C.F.R. Part 172, Subpart F.

B. A generator may accumulate hazardous waste on the site of its generation for ninety (90) days or less without a license, provided that:

(1) All such waste is transported off-site before or on the 90th day;

(2) The waste is placed in containers or tanks which meet the requirements of Section 8(A)(1) of this rule and which are managed in accordance with standards contained in this rule and Chapter 855, Section 9(C) (containers), and Chapter 855, Section 9(D) (tanks) except that the requirements of 40 C.F.R. 265.197(c) and 40 C.F.R. 265.200 do not apply.

(3) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container or tank and while being accumulated on-site each container or tank is labeled or marked clearly with the words, "Hazardous Waste";

(4) Each container is properly labeled and marked as required by Section 8(A)(2), (3) and (4) of this rule prior to shipment offsite; and

(5) The generator complies with all requirements imposed by 40 C.F.R. 264.16, 264.31-264.37, and 264.51-264.56 which are hereby adopted and incorporated by reference, provided however, that the reference in 40 C.F.R. 264.52(b) to "Part 112 of this Chapter, or Part 1510 of Chapter V" shall read "Part 112 or Part 1510 of volume 40 of EPA's Code of Federal Regulations" or the provisions of 38 M.R.S. §1317 *et seq.* and the rules promulgated thereunder, whichever is more stringent.

NOTE: Generators using hazardous waste compactors exempt from licensing under Chapter 856, Section 6(E) shall comply with all the requirements of Chapter 851 for the on-site accumulation of hazardous waste in tanks.

C. No generator shall accumulate hazardous waste for more than 90 days without a license, unless the Department grants an extension of up to 30 days due to unforeseen, temporary, and uncontrolled circumstances. A generator who does accumulate hazardous waste for more than ninety (90) days without an extension granted by the Department is an operator of a storage facility for hazardous waste and, as such, is subject to the requirements of Chapters 854, 855 and 856 of the Department's rules except that:

A generator may accumulate on-site as much as 55 gallons of each hazardous waste or one quart of each acutely hazardous waste identified or listed in Chapter 850 of the Department's rules in containers labeled with the words "hazardous waste" at a satellite accumulation area, without a license or interim status and without complying with Section 8(B)(1) of this rule, provided the generator complies with all other requirements of this rule. A satellite accumulation area must be at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste. A generator who accumulates hazardous waste or acutely hazardous waste under this subsection must upon accumulating either 55 gallons (200 kg) of a hazardous waste or 1 quart (1 kg) of a acutely hazardous waste immediately label the container with the date (accumulation start date) and relocate the container to the generator storage facility within 72 hours. At such time the generator shall comply with Section 8(B)(1) of this rule.

NOTE: Satellite accumulation areas are required to meet all applicable generator standards except for the 90-day accumulation time limitation, including but not limited to labeling (except the accumulation start date is not required until the quantity limit is reached), container management, and

weekly inspection requirements. For the purposes of this section, "all other requirements of this rule" means 8(B)(2), 13(B)(1), 13(C)(1), (3), (4), 13(D)(1) and (2).

9. Record keeping and Reporting

A. A generator must keep a copy of all test results, waste analyses and other determinations made in accordance with Section 5 of this rule for a period of time not less than ten (10) years from the date that the waste was last sent to on-site or off-site handling.

B. A generator must retain copies of all reports filed with the Department or the United States Environmental Protection Agency for a period of time not less than ten (10) years from the due date of the report.

C. A generator must retain the log books required under Section 13(D) for a minimum of one (1) year.

D. The periods of retention referred to in the previous paragraphs are extended automatically during the course of any unresolved enforcement action regarding regulated activity or as requested by the Commissioner, Department of Environmental Protection or by the Regional Administrator or Administrator of the United States Environmental Protection Agency.

E. A generator who removes or allows the removal of his hazardous waste from the site of its generation shall submit an Annual Report:

(1) On forms specified by the Department and containing information required by the Department as specified on those forms.

NOTE: Required information shall include that information required by EPA Form 8700-13A and 40 C.F.R. 262.41(a)(1)-(8) as a minimum. It is the Department's intention to also require appropriate annual information on a generator's progress towards meeting the hazardous waste reduction goals specified in the Maine Toxics Use Reduction Act.

(2) To the Department;

(3) No later than March 1st for the preceding calendar year.

F. A generator who handles his hazardous waste on the site of its generation shall submit an Annual Report covering those wastes including any universal wastes:

(1) In accordance with the provisions of Chapter 854, Section 6C(11);

(2) To the Department;

(3) No later than March 1st for the preceding calendar year.

Except that a generator shall not be required to file an annual report if the only hazardous wastes generated are universal wastes.

G. A generator shall comply with the applicable reporting and record keeping requirements of Chapter 857, *Hazardous Waste Manifest Requirements*, and 856, *Licensing of Hazardous Waste Facilities*; Chapter 854, *Standards for Hazardous Waste Facilities*; and 852, *Land Disposal Restrictions*.

H. The Department, as it deems necessary for the effective management of hazardous waste, may require generators to furnish additional reports concerning quantities and handling of wastes identified or listed in Chapter 850 of the Department's rules.

10. Farmers. A farmer, disposing of waste pesticides from his own use on his own farm which are hazardous wastes, is not required to comply with the standards in this rule or other standards in Chapters 852, 854, 855 or 856 for those wastes provided he collects wash and rinse water from the cleaning of spray equipment and triple rinses each emptied pesticide container in accordance with Chapter 850, Section 3(C)(4)(c) of the Department's rules and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label. The containers must then be disposed of in accordance with rules administered by the Pesticide Control Board, Maine Department of Agriculture.

NOTE: The Pesticide Control Board phone number is (207) 287-2731.

11. Closure

A. A generator, who no longer generates waste at a site, shall remove all hazardous waste and hazardous waste residues to a facility licensed to handle the waste. Remaining containers, tanks, liners, bases, materials, equipment, structures and soil containing or contaminated with hazardous waste or hazardous waste residues shall be decontaminated or disposed of at a facility licensed to handle the waste, except as provided in paragraph (B). A generator shall provide 45 days written notice to the Department prior to closure and shall submit to the Department, within 10 days of completion of closure, certification that closure was completed in accordance with the provisions of this rule. The certification shall be made by the generator and by an independent State of Maine registered professional engineer and shall

be submitted within ninety (90) days from the date when wastes were no longer generated at the site.

B. If a generator conducting closure of a tank system demonstrates that all contaminated soil cannot be practicably removed or decontaminated as required by paragraph (A) above, then the generator must close the tank system and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills under Chapter 855, Section 9(H). In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the generator must meet all the requirements for landfills in Chapter 855, Sections 9(A)(15) and (16).

C. As part of the written notice prior to closure in paragraph (A), the generator shall provide the Department with a detailed summary of all past or present releases of hazardous waste or constituents from tanks or containers used to accumulate hazardous waste under this Chapter. Based upon this summary, the frequency and nature of releases, whether the releases were addressed under a Department authorized remediation plan, and other available information, the Department may require the generator to prepare a closure plan for Department review and approval prior to the initiation of closure operations. The Department will notify the generator within 30 days of a properly filed closure notice if a closure plan will be required to be filed with the Department.

D. Change of site or installation ownership, or the vacating of the site by the generator shall constitute cessation of generation and shall initiate closure of all the units which will not continue to be used.

NOTE: Partial closures are required for those units that will not be used by a new owner or tenant.

12. Prohibitions

A. No generator may treat or dispose of hazardous waste on-site unless licensed to do so pursuant to Chapter 856 of the Department's Rules, except as provided in Chapter 856, Section 6(E).

B. The storage of hazardous waste in an underground or in-ground tank is prohibited after December 31, 1987, except:

A hazardous waste which is hazardous because of its ignitability may be accumulated and stored in underground or in-ground tanks if such storage is in double walled tanks meeting the requirements of 40 C.F.R. 265.193(e)(3), which are hereby adopted and incorporated by reference.

NOTE: Tanks which have previously held hazardous wastes are required to be closed under the provisions of this Rule.

C. For generators that store hazardous wastes in excess of 5,000 gallons at any one time, no storage shall occur unless licensed under Chapter 856 of the Department's rules:

(1) on land defined as a wetland under statutes or regulations administered by the Department, Department of Conservation, Department of Inland Fisheries and Wildlife, Department of Marine Resources, or the State Planning Office; or

(2) on land that overlies any portion of or surface or subsurface sand and gravel aquifer or a high yield aquifer, unless the storage area is underlain by a synthetic liner which meets the design requirements of 854,8B(4).

D. No generator may discharge hazardous waste via a sewer system containing domestic sewage to a publicly owned treatment works (POTW) unless the generator has received an abbreviated permit under Chapter 856 and the discharge is in compliance with such license or if the generator is eligible for an exemption pursuant to Chapter 850, Section 3(A)(4)(a)(ii).

13. Management Standards

A. Performance Standards. Generators shall manage their waste to prevent or minimize risk to the environment.

B. Design Standards

(1) A generator must accumulate and store its containerized hazardous waste upon a base which is a firm working surface, such as asphalt or concrete, which is impervious and which must be kept entire and which is constructed of a minimum thickness of four (4) inches and shall be constructed to prevent spillage from leaving the area.

NOTE: Examples of such a structure are a base constructed with a raised berm of at least six (6) inches around the entire facility or a location that is enclosed with a roof and walls.

(2) Each building or separate container storage area must have a containment and collection system the capacity of which must exceed 20% of the total capacity of all containers and tanks used to store wastes or 110% of the capacity of the largest container or tank, whichever is greater. This system must also provide for sufficient freeboard to allow for containment and collection of precipitation resulting from a 24 hour, 25 year storm, unless the storage facility is enclosed.

(3) A tank must be designed and installed so that it can be fully inspected for structural integrity, deterioration, and leaks, except that a tank whose base cannot be fully inspected must be designed and installed to meet the requirements of 40 C.F.R. 265.193(e)(3) for double walled tanks, which is hereby adopted and incorporated by reference.

(4) Uncovered tanks must be designed to assure at least 2 feet of freeboard at all times.

(5) Overtopping of tanks during continuous feed must be prevented by a system of automatic shutoff or by automatic diversion of the waste feed into a tank having at least 30 percent of the volume of the primary tank.

C. Operation

(1) A container must not be used for the storage of hazardous waste for a period of time exceeding the design life of the container.

(2) Any pipeline and pipeline valves that transfers hazardous waste to or from a tank must be inspected and pressure tested at least annually or tested at least annually by a method reviewed and approved by the Department to determine structural integrity. All tanks and piping valves must be internally inspected at least annually to determine fitness for use, except for the tank portion of double walled tanks with continuous interstitial monitoring which must be tested in accordance with Chapter 691, Section 7(C)(2) of the *Regulation for Registration, Installation, Operation & Closure of Underground Oil Storage Facilities*. The date of the most recent inspection and testing of a tank must be painted in a prominent location on the tank. A tank or pipeline that fails the test or is determined to be unsafe shall be removed or repaired to the satisfaction of the Department. Results which show failure of a tank or piping or that are shown through an inspection to be unsafe shall be submitted to the Department within 10 days of the tank testing or inspection. A log of the dates and results of all inspections and testing must be maintained pursuant to Sections 9(C) and 13(D)(3).

(3) Hazardous waste must not be stored in containers or tanks which are rusted, bulging or leaking.

(4) Containers or tanks must be compatible with the type of waste stored therein.

(5) Containers or tanks used to store hazardous waste must not be used to store foodstuffs or animal feed or any substance likely to come into contact with foodstuffs or animal feed.

(6) Containers or tanks holding incompatible hazardous wastes must not be stored in the same enclosure, building or structure unless they are segregated in a manner that prevents the wastes from coming into contact with one another under any circumstance, including simultaneous leakage or failure of a container(s) or tank(s).

(7) All hazardous waste containers must be stored in a manner that allows access for inspection and for remedial action if any container is found to be rusting, bulging or leaking or waste is spilled or discharged. In any event:

(a) Containers with a capacity of ten (10) gallons or more must not be stacked in rows in excess of four (4) wide and two (2) high.

(b) Aisle space between rows of containers must be sufficient to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation in any emergency but in no event shall the aisle space be less than thirty six (36) inches wide. Rows not exceeding a single container in width and two (2) high may be stacked adjacent to walls or other components of the storage facility.

(c) The facility must be established, constructed, altered and operated in compliance with the requirements of:

(i) 40 C.F.R. Part 264.14, Security;

(ii) 40 C.F.R. Part 264, Subpart C. Preparedness and Prevention, and in addition, the precautions required to be taken by 40 C.F.R. Part 264.17 must meet applicable requirements of codes, standards and rules of the Department of Public Safety (State Fire Marshal's Office), the aid agreements required by 264.37 must be in writing, on file with each party to the agreement and with the Department, readily accessible to facility personnel, and reviewed and updated annually.

D. Inspection, Surveying and Record keeping

(1) Weekly inspections of all containers of hazardous waste, including containers at satellite accumulation areas, shall be made and recorded in a log book which shall be kept at the facility to ensure at least the following:

(a) No containers are rusting, bulging or leaking.

(b) All hazardous waste containers are stored and managed according to 7(a) and 7(b) above.

(2) The log book shall contain the name of the person conducting the inspection, the date and time of the inspection, and the conclusions or results of each inspection.

(3) The annual tank, valve and pipe testing and inspection, results shall be recorded in the log book.

E. Air, Ground Water and Surface Water Monitoring. The Board may require ground water, surface water and air quality monitoring in accordance with the requirements of Sections 8(D), 8(E), and 8(F) of Chapter 856 of the Department's rules if it determines that such monitoring is necessary to ensure protection of public health and safety or of the environment.

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