

EXPLANATION OF HAZARDOUS WASTE RULE UPDATES

The North Dakota Hazardous Waste Rules (the Rules) must be at least as stringent as the federal hazardous waste rules found in Title 40 of the Code of Federal Regulations. Whenever there are changes to the federal regulations, the State must adopt any regulations stricter than current regulations, and have the option to adopt rules less stringent than current regulations.

The Rules were last updated in 2016. Since then, there have been five updates to the federal requirements. These rule changes are summarized in federal documents called a "Rule Checklist". A Rule Checklist lists the federal citation, and the revised text of the federal request. These checklists are used by State personnel to update corresponding State regulations. There are five rule changes that are being addressed in FY2020:

1. Import and Exports of Hazardous Waste (Checklist 236)
2. Hazardous Waste Generator Improvements Rule (Checklist 237)
3. Confidentiality Determinations for Hazardous Waste Export and Import Documents (Checklist 238)
4. Hazardous Waste Electronic Manifest User Fee Rule (Checklist 239)
5. Safe Management of Recalled Airbags (Checklist 240)

Each checklist has been filled out with the corresponding State regulation for each change. The goal of each rule change has been summarized below.

IMPORT AND EXPORTS OF HAZARDOUS WASTE (CHECKLIST 236)

The federal import/export requirements were updated in November 2016 to be more consistent with import/export requirements between members of the Organization of Economic Cooperation and Development (OECD); allow electronic submittal of import/export documents to EPA; and enable electronic validation of consent in the Automated Export System (AES).

States were required to adopt this rule change by July 1, 2019. Due to the shift to the Department of Environmental Quality (NDDEQ), rule changes were placed on a temporary hold until a new primacy package was approved.

HAZARDOUS WASTE GENERATOR IMPROVEMENT RULE (CHECKLIST 237)

This rule was implemented in November 2016. The goal of this rule was to reorganize and clarify major portions of the federal requirements. There were very few changes that caused the requirements to be more stringent, and a few less stringent requirements. These changes were:

1. Requiring Small Quantity Generators (SQGs) to re-notify (More stringent)

Under this provision, SQGs would be required to re-notify as SQGs. North Dakota already has a more stringent requirement in the regulations.
2. Identifying hazards of wastes being accumulated (More stringent)

This provision requires containers of hazardous waste to be labeled with their associated hazards (i.e; ignitable, corrosive, toxic, etc.)

3. Notification of closure (More stringent)

Under this provision, notification must be provided to the State when a generator ceases hazardous waste activities.

4. Closure as a landfill if unable to meet standards (More stringent)

This was an expansion of other rules. During clean-closure activities, if a generator is unable to meet clean-up standards, they are required to close as a landfill. This requirement already existed within the regulations for certain types of storage facilities - this expanded the requirement for facilities accumulating wastes in containers.

5. Biennial reporting for recyclers who don't store prior to recycling (More stringent)

Requires a biennial report for hazardous waste recyclers who do not store hazardous waste prior to recycling.

6. Biennial reporting for the whole year (More stringent)

Older provisions only required biennial reporting for months when generators were considered large quantity generators (LQGs). Since most LQGs remain so all year, this requirement was a bit redundant. For facilities that experienced episodic periods of LQG status, the episodic generation provisions identified in Item #9 would replace this requirement.

7. Quick reference guide for contingency plans (More stringent)

Contingency plans are often large and very detailed. This makes it difficult to use in an emergency. This requires a short, one-page reference guide for vital emergency information.

8. Very Small Quantity Generator (VSQG) consolidation (Less stringent)

Under this provision, VSQGs that are owned by the same entity may consolidate their wastes at an LQG also under the control of the same entity.

9. Episodic generation (Less stringent)

When facilities experience unforeseen or intermittent waste generation events, the only legal option was to re-notify as the correct generator status. This was a problem because increasing generator status from VSQG to SQG (or SQG to LQG) meant the generator must now meet a very different subset of accumulation, storage, and operational requirements. Many of these generators would be unable to meet the requirements, and would only be this higher status for a short period of time. The episodic generator requirements were added to allow facilities to have periodic "clean-

outs” or manage unforeseen events in a way that was protective of the environment and human health, but also in ways that do not place an unfair burden upon the generator.

10. Waiver from 50-ft rule (Less stringent)

Ignitable hazardous waste must be stored a minimum of 50-ft away from the property line. This is not always possible due to property and building dimensions. This provision allows an operator to receive a waiver from this requirement.

Overall, the Generator Improvement Rule’s most significant changes were in organization and language. North Dakota has adopted the more and less stringent requirements, as well as some of the organizational and readability changes.

CONFIDENTIALITY DETERMINATIONS FOR HAZARDOUS WASTE EXPORT AND IMPORT DOCUMENTS (CHECKLIST 238)

This provision made it impossible for a shipment of exempted cathode ray tubes to be labeled as confidential business information. This was done to apply a consistent approach in confidentiality claims for import/export documents.

HAZARDOUS WASTE ELECTRONIC MANIFEST USER FEE RULE (CHECKLIST 239)

This rule change described the use requirements and fee requirements of the electronic manifest system. Many of the provisions were not allowed to be authorized for state management. Many of these requirements were incorporated by reference – meaning the North Dakota regulations were worded to reference the applicable subparts.

SAFE MANAGEMENT OF RECALLED AIRBAGS (CHECKLIST 240)

This amendment excluded recalled airbags from certain hazardous waste requirements. This allowed the airbags to be managed in ways that protected human health and the environment, but would expedite the disposal process.

QUESTIONS OR CONCERNS ABOUT HAZARDOUS WASTE RULE AMENDMENTS

If you have any questions or concerns about the proposed changes to the Hazardous Waste Rules, please contact:

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