

INSIGHTS

Nothing is More Expensive Than a Missed Opportunity: A Unique New Moment for Hazardous Waste Generators in Texas

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Texas hazardous waste law just notably improved—at least for facilities that take advantage of some recent rules. The Texas Commission on Environmental Quality (“TCEQ”) recently approved a rules package effective on February 3, 2022 that adopts the U.S. Environmental Protection Agency’s (“EPA”) November 2016 “Hazardous Waste Generator Improvements Rule.” While the new rules offer a variety of benefits – overall simplification, aerosol cans approved as universal waste – the most consequential change is the new “episodic generator” rule.

The episodic generator rule can help Texas facilities that do not normally generate significant quantities hazardous wastes keep their regulatory burdens limited. As facilities generate greater quantities of waste in a given month, they trigger more extensive and complex regulatory burdens. Even the smallest generators can encounter special, or “episodic,” projects or circumstances—like a tank cleanout, disposal of a batch of off-spec product, or a spill—that result in a short-term increase in hazardous waste generation and trigger those heavier obligations. Companies in this situation that overlook those extra duties have been heavily penalized in recent years, with agencies pursuing numerous enforcement actions and assessing penalties that sometimes reach several million dollars.

The new Texas episodic generator rules can solve these problems, but only if facilities follow the rules scrupulously. Small generators are now allowed one episodic generation event per year without triggering the more stringent requirements. The new rules require formal notice of the generation event to TCEQ 30 days before the generation event, or in the case of an unplanned event, within 72 hours afterwards. The new rule requires facilities that want to take claim its safe harbor to have an EPA hazardous waste ID, to observe unique labeling requirements, to use appropriate manifesting and disposal practices, and to keep detailed records.

This new Texas rule is a huge win for the regulated community and brings the hazardous waste regulatory framework in line with reality: facilities can be lightly regulated generators of small amounts of waste under normal conditions but still periodically have a special event that generates more waste. Such facilities shouldn’t have to scramble to meet impractical regulatory requirements, nor should they face harsh enforcement for being unable to do so. TCEQ has helpfully provided a way for facilities to conduct maintenance and other activities

that otherwise might result in a temporary change in generator status, and the agency expects facilities to observe the conditions necessary for claiming that safe harbor.

Moving forward, companies should take steps to properly implement the new episodic generator rule at their facilities. Personnel with responsibilities for turnarounds, operations, maintenance activities, cleanouts, and quality control should be trained how to take advantage of the episodic generator rule's safe harbor provisions. Companies should plan waste-generating activities in such a way that facilities can take advantage of this once-per-year safe harbor. And, looking backwards, if a company is concerned that it may have previously triggered but failed to meet the more stringent requirements of a larger generator status in the past, the Texas Audit Privilege Act and EPA's Audit Policy may provide ways to address those past compliance gaps without penalty.

If you'd like to know more about the episodic generator rule and receive a longer version of this client alert in a white paper format, or have any other questions about taking advantage of this new rule, please contact [Tim Wilkins](#) or [Daniel Pope](#).