Comments Of
The Utility Solid Waste Activities Group,
The Edison Electric Institute,
The American Public Power Association, the American Gas Association, and the National Rural Electric Cooperative Association
On The
"Hazardous Waste Generator Program Evaluation"
Advanced Notice of Proposed Rulemaking
69 Fed. Reg. 21800 (April 22, 2004)

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Comments Of The Utility Solid Waste Activities Group, The Edison Electric Institute, The American Public Power Association, The American Gas Association, And The National Rural Electric Cooperative Association On The "Hazardous Waste Generator Program Evaluation" Advanced Notice of Proposed Rulemaking 69 Fed. Reg. 21800 (April 22, 2004)

The following comments in response to EPA's advanced notice of proposed rulemaking soliciting comment from hazardous waste generators to evaluate the effectiveness of and potential improvements to the RCRA Program ("the ANPR") (69 Fed. Reg. 21800 (April 22, 2004)) are submitted on behalf of the Utility Solid Waste Activities Group ("USWAG"), the Edison Electric Institute ("EEI"), the American Public Power Association ("APPA"), the National Rural Electric Cooperative Association ("NRECA") and the American Gas Association ("AGA") (collectively referred to herein as "USWAG").[1]

INTRODUCTION

Since its formation in 1978, USWAG has participated in virtually every major RCRA rulemaking to present the views of its members on the need to develop a cost-effective, practical, and environmentally protective hazardous waste regulatory program. USWAG members are regulated under RCRA's hazardous waste generator program and we, therefore, applaud EPA's effort in this rulemaking to identify ways to improve the effectiveness and reduce the compliance costs of the nearly 25-year old generator

[1] USWAG was formed in 1978, and is an association primarily dedicated to assisting members in the management of wastes and the beneficial use of materials associated with the generation, transmission, or sale of electricity and natural gas. USWAG is comprised of approximately 80 energy industry operating companies and associations, including the EEI, the APPA, NRECA and the AGA. EEI is the principal national association of investor-owned electric power and light companies. APPA is the national association of publicly owned electric utilities. NRECA is the national association of rural electric cooperatives. AGA is the national association of natural gas utilities. Together, USWAG members represent more than 85% of

(footnote continued to next page)

regulations. While EPA's regulations have generally been effective in ensuring the environmentally sound management of hazardous waste generated by hundreds of thousands of generators across the country, there is always room for improvement in a regulatory regime of this magnitude. This is especially true now, given that EPA, RCRA-authorized states, and the regulatory community have had close to a quarter century of experience in implementing and complying with the generator rules. Based on this long history, all parties can come to this rulemaking with common sense recommendations for improving EPA's generator program.

As discussed below, the utilities have certain unique compliance issues with the generator rules, due primarily to the fact that the nature of utility operations do not lend themselves to the typical paradigm of a single fixed-site RCRA generator. Among other things, we believe this rulemaking initiative presents the ideal opportunity to correct this unique issue by having EPA reinitiate its earlier rulemaking efforts to allow utilities to consolidate hazardous wastes from remote utility locations at a utility central collection facility without triggering RCRA's permit requirements. As EPA itself recognizes, such consolidation operations are incidental to utility generator operations and should not trigger RCRA's permit program.

In addition, our comments identify other suggested improvements for the generator regulations, including:

- Expanding the existing exclusion from hazardous waste regulation for TC organic wastes subject to regulation under TSCA's PCB program to include all hazardous wastes subject to TSCA's PCB regulations;

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the total electric generating capacity of the U.S. and service more than 95% of the nation's consumers of electricity and over 93% of the nation's consumers of natural gas.

- Clarifying certain applications of the satellite accumulation rule, including that (1) there is no bar to distinct satellite accumulation areas being located adjacent to one another, (2) a centralized satellite accumulation facility can be used to collect "like" wastes that are generated throughout a facility, and (3) a satellite accumulation container can change locations as the "point of generation" of the wastes being stored in the container moves from point –to point within a particular facility;

- Tailoring the generator rules applicable to "episodic" generation events, including looking to the management standards applicable to universal wastes as a guide for the management standards for units used to accumulate wastes generated only on an episodic basis; and

- Codifying EPA's long-standing position that generators can treat wastes in generator accumulation units under 40 C.F.R. § 262.34.

These issues are discussed further below.

DISCUSSION

I. EPA Should Complete Its Initiative To Tailor the Generator Regulations To Allow For Utility Intra-Company Waste Consolidation.

EPA's generator reform initiative provides the ideal opportunity for the Agency to reinitiate and finalize its earlier efforts to tailor RCRA's generator program to allow for the intra-company consolidation of hazardous wastes by electric and gas utilities (collectively "utilities"). This is an effort that EPA and USWAG worked closely together on several years ago when the Agency was poised to issue a proposed rule that would have conformed RCRA's generator rules to more realistically reflect the true function and nature of utility intra-company waste consolidation operations. In short, the concept would have allowed utilities to consolidate intra-company hazardous wastes from remote off-site utility locations (*e.g.*, utility manholes) at a company-owned utility central collection facility ("UCCF") without the need for the UCCF to obtain a RCRA storage permit.

The reasoning behind this initiative was EPA's realization that utility waste consolidation operations do not fall within the typical paradigm of a RCRA hazardous

waste generator – *i.e.*, a single facility generating hazardous wastes that are shipped directly to a TSDF. Rather, generating and providing electricity and gas services to commercial and residential customers requires a widely dispersed generation and distribution system including, among other things, power plants, substations, utility access vaults (*e.g.*, manholes), transmission lines (both gas and electric), gas pipelines, utility poles, and service centers, all of which are distributed over a utility's respective service area. Under a literal reading of EPA's current hazardous waste rules, when these many diverse and often remote sites generate hazardous waste, they are viewed as distinct and separate hazardous waste generators and are required, among other things, to (1) obtain a separate I.D. number, (2) comply with the full panoply of EPA's hazardous waste manifest and land ban notification requirements for each off-site shipment of waste, and (3) transport such wastes directly to a fully permitted or interim status treatment, storage or disposal ("TSD") facility.

This regulatory regime frustrates the ability of utilities to cost effectively consolidate wastes from intra-company remote locations at a company-owned UCCF, before shipping the wastes to a commercial TSD facility. USWAG has long advocated that this result is unnecessarily burdensome, wasteful of private and public resources, and environmentally counter-productive because it results in more shipments of hazardous wastes on public roadways and hinders the ability of electric utilities to consolidate wastes for purposes of cost-effective recycling.

Indeed, under the federal PCB regulatory program, EPA has long authorized the intra-company consolidation of PCBs wastes by utilities – which, like RCRA hazardous wastes, are generated throughout a company's transmission and distribution system – without converting the central collection facility to a "commercial storer of PCB waste."

See definition of "Commercial storer of PCB waste" at 40 C.F.R. § 761.3 ("Storage of one company's PCB waste by a related company is not considered commercial storage."). In crafting the PCB regulatory program, the Agency realized the practical necessities of allowing for the intra-company consolidation of PCB wastes prior to their off-site shipment to a commercial PCB storage or disposal facility and that subjecting such consolidation practices to the requirements applicable to "commercial storers" would be unnecessary and counter-productive. See 54 Fed. Reg. 52716, 52718-19 (Dec. 21, 1989). For the same reasons, EPA determined that the intra-company consolidation of PCB wastes at a company-owned central collection facility should not trigger the PCB manifest rules, requiring instead that a PCB manifest be used only when the waste "leaves the generator's control." See 40 C.F.R. § 761.207(a) (triggering the PCB manifest requirements only when the generator "relinquishes control over PCB wastes" for commercial off-site storage or disposal); *see also* 54 Fed. Reg. at 52728 ("A manifest need not accompany the shipment via transport vehicle of PCB wastes to a storage or disposal facility owned or operated by the end user of PCBs and PCB items, because these generators have not yet relinquished control over the PCB waste.").

Implicit in the above PCB regulations is the correct and logical recognition that, due to the unique nature of utility operations, the intra-company consolidation of wastes is a natural component a utility's "generator" functions. These regulations have been in place for well over a decade and have provided an environmentally sound and practical mechanism for the intra-company consolidation of utility wastes. As discussed below, there are compelling reasons for the RCRA program to follow suit.

A. EPA's New York XL Rule Underscores the Need for a Similar Rule Of National Applicability.

EPA's earlier efforts to develop an intra-company consolidation rule for utility wastes was correctly predicated on the realization that allowing utilities to consolidate intra-company wastes at a UCCF would greatly facilitate the efficient and environmentally sound management of such wastes, while decreasing the environmental risks associated with the large number of individual waste shipments from remote sites to commercial TSDFs. This national effort, however, was temporarily curtailed pending EPA's issuance of the New York State XL rule, which addressed this same issue, albeit only for utilities in New York under the auspices of the limited parameters of EPA's XL program. 64 Fed. Reg. 37624 (July 12, 1999) (codified at 40 C.F.R. § 262.90). In short, that rule allows hazardous wastes generated at a utility's remote locations to be consolidated without a RCRA permit for up to 90 days at a UCCF, so long as the applicable 90-day generator accumulation conditions are met at the UCCF. *Id*. at § 262.90(b)(1).

The rule also requires, among other things, that UCCFs only receive hazardous wastes from the company's remote locations and that specified shipments of hazardous wastes (greater than 100 kilograms of hazardous waste) from remote sites to a UCCF comply with applicable hazardous waste manifest and DOT transportation requirements. *Id*. at §§ 262.90(b)(3) & (9). Only the UCCF is required to obtain an EPA I.D. number (as opposed to each individual remote location), and the UCCF's biennial report is allowed to include the hazardous wastes received from remote locations. *Id*. at §§ 262.90(b)(5) & (8). The New York State XL rule properly recognizes that consolidation of utility intra-company wastes from remote locations at a utility-owned UCCF is an integral component of a utility's hazardous waste generation function. The

rule, therefore, appropriately encompasses this consolidation practice within the confines of RCRA's generator program, as opposed to regulating the UCCF as a distinct and wholly unrelated TSDF.

The compelling policy reasons behind the New York State XL rule are, of course, applicable to utilities across the country, and EPA's generator reform initiative is the perfect forum for resolving this long-standing issue at the federal level. Although several states have taken the initiative to allow intra-company hazardous waste consolidation where they can, the states are not able to provide the uniform, across-the-board solution that is needed. As the New York XL rule illustrates, literal application of the RCRA rules to these practices is akin to trying to place a square peg in a round hole; it does not work and reform is needed.

As EPA explained in promulgating the XL rule: "To enhance protection of public health, safety, and the environment, it would be preferable if hazardous waste generated at remote [utility] locations were transported to a secured location as soon as it is collected from the remote location." 64 Fed. Reg. at 37626. EPA reasoned further that:

> At the secured UCCFs, the Utilities could then safely combine compatible types of hazardous waste collected from different remote locations to achieve important efficiencies in transportation and waste management. By consolidating hazardous waste in this manner, vehicles transporting waste from a UCCF to a commercial TSDF could then carry relatively full loads. On the other hand, if hazardous waste must be transported directly to a TSDF directly from [utility] remote locations, more vehicle trips, often hundreds of miles away, would be required, each carrying smaller loads.

Id.

The Agency also acknowledged that allowing for the intra-company consolidation of utility wastes "will enhance the protection of public health and the environment by facilitating and requiring the more immediate removal of hazardous waste that is difficult

to properly secure at remote locations to staffed and secure UCCFs." *Id*. In addition, by allowing for this type of consolidation, "the number of vehicle trips that must be made to the often-distant TSDF" is minimized, and associated "emissions from mobile sources are reduced, as well as vehicular fuel consumption and the possibility of an accident involving a vehicle transporting this waste." *Id.*

In addition to the environmental benefits, there are corresponding efficiencies for utilities and state agencies. Again, as EPA explained:

> Utilities should realize considerable savings in direct costs through efficiencies in transportation by consolidating hazardous waste. Reducing the number of trips made to often-remote TSDFs by waste-transporting vehicles also reduces mobile source emissions. Elimination of the need to complete biennial reports should bring about a very significant reduction in paperwork and savings in time and labor, both for Utilities and environmental regulatory group agencies, who can then redirect such resources to other environmental needs.

Id.

B. EPA Has Established The Legal Basis for a Utility Consolidation Rule Falling Within the Realm of "Generator" Activities.

As EPA correctly reasoned in promulgating and then later successfully defending the New York State XL rule, the intra-company consolidation of hazardous wastes by utilities is "incidental to [a] utility's operations as a *generator* of hazardous waste" and it is well within EPA's statutory discretion to characterize such consolidation activities as "generator" activities, as opposed to subjecting UCCFs consolidating such wastes to RCRA's TSDF permit requirements. *See* EPA Brief in *Atlantic States Legal Foundation v. EPA*, No. 99-1409 (D.C. Cir.) at 20-21 (relevant portions of EPA's brief in that case are attached hereto); *see also* 64 Fed. Reg. at 37630 (it is "inappropriate to require" a utility central collection point for such wastes to obtain a storage permit "*because it [the central collection point] is not acting as a TSDF*") (emphasis added).

EPA elaborated on this point by noting that the "creation of a special rule to address the unique circumstances faced by utilities is well within the discretion that RCRA gives EPA to determine which activities are incident to generation, and which require a TSD permit." EPA Br. at 20. The XL rule represented "an exercise of the discretion that the statute gives to the Agency to determine the bounds of the generator and TSD categories." *Id*. at 20-21. EPA's brief also reiterated the underlying basis for a consolidation rule targeted to utilities:

> Most hazardous waste is generated at industrial or commercial facilities that are staffed and have the capability to appropriately manage accumulated wastes. The general RCRA rules are well suited to such facilities. However, the remote locations operated by utilities present a very different situation, and the [XL] rule under review is an attempt by the Agency to create a regulatory regime suited to the unusual, if not unique, circumstances faced by utilities.

Id. at 21.[2]

C. EPA Should Develop A Utility Consolidation Rule of National Applicability.

There is nothing holding EPA back from pursuing a utility waste consolidation rule at the national level, and USWAG respectfully submits that the generator reform

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[2] EPA's brief in the XL litigation also reinforced the regulatory barriers to utilities engaging in the intra-company consolidation of hazardous wastes:

> Because of the high cost of obtaining a TSD permit, the generally applicable RCRA rules result in utilities managing hazardous waste generated at remote locations in a fashion that makes little sense from either a human health or economic perspective*, i.e.*, leaving the wastes at locations that are not permanently staffed, such as public roads, until uneconomical partial shipments to permitted TSD facilities can be arranged. The XL rule allows the utilities to manage these wastes at UCCFs as generators, *i.e.,* by holding them in a properly secured location and consolidating them for more efficient transport to a TSD facility. 64 Fed. Reg. at 37626. This is exactly what the utilities would do with the wastes if they were generated on a single site, and is directly analogous to the consolidation of wastes generated at scattered locations within a large facility into a central accumulation area.

Id. at 21-22.

initiative is the perfect forum for EPA to do so. Because the New York State XL rule was promulgated in the context of the broader EPA XL program, certain elements of that rule obviously are not appropriate for inclusion in a rule of national applicability. Instead, the core elements of the New York XL rule – those that were directed to remedy the fundamental inconsistencies with applying RCRA's existing rules to utility intra-company waste consolidation practices – should serve as the cornerstone for a rule of national applicability. These would include, for example, the threshold and fundamental principle that utilities can consolidate hazardous wastes generated at remote locations without a RCRA permit for up to 90 days at a UCCF (40 C.F.R. § 262.90(b)(1)).[3] In addition, as EPA has recognized for the intra-company consolidation of PCB wastes under TSCA (*see* 40 C.F.R. § 761.207(a)), USWAG does not believe that such consolidation practices should trigger RCRA's manifest requirements, but that a more streamlined intra-company tracking system better serves such intra-company transfers. USWAG looks forward to working with EPA in the development of a national rule allowing utilities to consolidate intra-company wastes at UCCFs.

II. EPA Should Expand The Exclusion From Hazardous Waste Regulation for TC Organic Wastes Subject To Dual Regulation Under TSCA's PCB Regulations To Encompass *All* Hazardous Wastes Subject to the TSCA PCB Regulations.

USWAG believes that EPA should expand the scope of the exclusion for Subtitle C regulation under 40 C.F.R. § 261.8 to include all PCB regulated wastes that also are identified or listed hazardous wastes, and not limit the scope of this rule to only

[3] Of course, we do not expect this rulemaking initiative to in any way alter the requirements for those remote locations that do qualify as "conditionally exempt small quantity generators."

those PCB wastes that are hazardous under the toxicity characteristic ("TC") for specified organic constituents (D018-D037). Amending the scope of this rule within the context of this generator rulemaking is appropriate because the scope of the exclusion potentially has a direct bearing on the generator status of many utilities. Moreover, as discussed below, properly amending the scope of this rule to include all characteristic wastes already subject to comprehensive controls under TSCA's PCB regulatory program would complement EPA's increasing focus on promoting the voluntary phase-out of PCB-containing equipment and would help accelerate the remediation of historic PCB spill sites.

By way of background, when EPA amended the scope of the TC regulation in 1990 to include new organic constituents, the Agency realized that such expansion would potentially bring within the scope of RCRA's Subtitle C hazardous waste system certain dielectric fluids (*e.g.*, for the potential presence of chlorinated benzenes) that were already regulated under TSCA's stringent PCB regulatory program per 40 C.F.R. Part 761. Because TSCA's PCB program regulates *all* facets of PCB use, storage, transport and disposal, USWAG and others urged EPA to avoid creation of a dual regulatory regime that would have resulted by applying RCRA to PCB-containing wastes already fully regulated under another comparable federal statute. Commenters also pointed out that subjecting PCB-containing wastes to dual regulation would hinder PCB phase-out programs and create other "legal, practical and administrative complications." 55 Fed. Reg. 11798, 11841 (March 29, 1990).

EPA fully agreed with these comments, noting, among other things, that:

> [t]he TSCA program, with which the regulated community is familiar, is specifically tailored to deal with the problem of widely dispersed waste generation and the timely disposal of a chemical that is no longer commercially produced. The confusion that could result from the addition

> of requirements under a separate regulatory disposal system, and the RCRA disincentives to waste production, would cause significant disruption to the expeditious disposal of large quantities of these PCB wastes if these wastes were to become subject to the RCRA hazardous waste regulations.

Id. In addition to the unique regulatory regime already in place for PCB wastes and the complications of dual regulation, the Agency also reasoned that the regulation of PCB wastes under TSCA was fully protective of human health and the environment:

> [T]he Agency believes that the existing system for PCB disposal, including the existing TSCA disposal regulations and recent additions to the program (e.g., the proposed notification and manifesting rule [*which additional rules have since been finalized*]), are adequate to protect human health and the environment with respect to the disposal of these wastes. **Thus, further regulation under RCRA for PCB-containing dielectric fluids and associated PCB-contaminated electrical equipment does not appear to be necessary at this time.**

Id. (emphasis added). Accordingly, EPA promulgated an exclusion from hazardous waste regulation, codified at 40 C.F.R. § 261.8, for dielectric fluids exhibiting a hazardous characteristic for one of the new TC organic constituents (D018-D043).

EPA did not, however, extend this exemption to other similarly situated PCB-containing/hazardous dielectric fluids – such as PCB-containing fluids that are hazardous for ignitability (D001), corrosivity (D002), reactivity (D003), or the other toxicity constituents (D004-D0017). This was the case even though the same rationale for excluding dually regulated PCB/TC organic wastes applies with equal force to dielectric fluids that also are dually regulated under TSCA and RCRA. The same protective TSCA management standards apply to these other categories of wastes. While EPA stated when promulgating this exemption in 1990 that it would "evaluate the integration of the TSCA PCB regulations with the RCRA hazardous waste regulations for other PCB-containing wastes which are identified or listed as hazardous" (55 Fed.

Reg. at 11841), the Agency has not followed up on this issue for the last 16 years. USWAG respectfully submits that now is the time to do so.

As noted above, one of the fundamental reasons for promulgating the exclusion for PCB-containing wastes under § 261.8 was EPA's legitimate concern that subjecting such wastes to dual regulation would complicate mandatory PCB phase-out requirements for specified pieces of PCB-containing electrical equipment. *Id*. This logic is even more compelling today as EPA's PCB Program is reportedly planning to embark upon a nationally coordinated effort to promote the *voluntary* phase-out of a far broader universe of PCB-containing equipment.

If the dual regulation of PCB/hazardous wastes under RCRA and TSCA was a complicating factor to ensuring compliance with a narrower, *mandatory* PCB phase-out program in 1990, then a similar exclusion is surely warranted to help promote participation in a much broader, nationwide *voluntary* PCB phase-out effort. Based on USWAG member participation in similar phase-out initiatives at the Regional level, we respectfully suggest that critical to the success of any voluntary effort – where companies are being asked to prematurely dispose of otherwise valuable and perfectly functional equipment and materials – is the elimination of any unnecessary regulatory burdens. By removing the specter of RCRA/TSCA dual regulation for PCB materials voluntarily removed from service, EPA would eliminate a potentially significant barrier to companies engaging in such voluntary efforts. The same rationale applies to encouraging companies to engage in accelerated remediation efforts of historic PCB spill sites. By removing the potential application of RCRA Subtitle C to such remediation wastes, there would be one less regulatory barrier to confront when engaging in such pro-active remediation efforts.

For all the above reasons, USWAG believes that EPA should revisit the scope of the existing exclusion under 40 C.F.R. § 261.8 and expand the scope of that rule to include *all* hazardous PCB-containing wastes already subject to full regulation under TSCA's PCB program. As EPA acknowledged when first promulgating the rule in 1990, TSCA's management and disposal regulations already provide fully protective controls for PCB-containing wastes and subjecting such wastes to RCRA controls is not only duplicative, but also creates regulatory and practical complications. This is true for *all* PCB-containing wastes subject to RCRA's hazardous waste rules – not only those that are hazardous for the TC organic constituents. Therefore, it is time for EPA to expand the scope of the rule accordingly.

III. EPA Should Clarify Several Issues Regarding The Availability Of The Satellite Accumulation Area Rule.

Like many others in the regulated community, USWAG believes that the "satellite accumulation area" ("SAA") rule is a critical component of the RCRA generator program. This provision provides a practical and common sense regulatory option for thousands of RCRA generators to accumulate small amounts of hazardous waste "at or near any point of generation" in an environmentally sound manner. 40 C.F.R. § 262.34(c)(1). As EPA first reasoned in promulgating the SAA rule, "the accumulation at satellite areas of amounts of up to 55 gallons of non-acutely hazardous waste is reasonable and safe and does not pose a threat to human health or the environment." 49 Fed. Reg. 49568, 49569 (Dec. 20, 1984). Two decades later, EPA's reasoning still holds true, and USWAG respectfully submits that the SAA rule is one of the successful generator regulations that warrants EPA's continued strong support. Without this common sense and environmentally sound management option, strict compliance with RCRA's generator regulations would be virtually impossible and, in many cases, less protective,

as frequent shipments of extremely small volumes of waste would be required to be moved immediately upon generation to a centralized storage location.

With that being said, a common compliance issue that arises under the SAA rule is determining when an SAA is "at or near any point of generation." USWAG appreciates that this issue was raised during the recent public hearings on the generator initiative and that there was discussion regarding whether to attempt to more precisely define this important regulatory phrase. USWAG members also have debated this question, and ultimately determined EPA should leave the phrase "as is." This is because whether a particular accumulation area is "at or near any point of generation where wastes initially accumulate" so as to qualify as a SAA is too fact- and/or site-specific to be defined by any inflexible set of criteria. USWAG is concerned that any attempt to further refine this key regulatory phrase would unavoidably result in excluding otherwise suitable SAA locations. Therefore, EPA should not attempt to further amend or clarify the phrase "at or near any point of generation" in the SAA rule, but rather allow the regulated community, in conjunction with their respective regulatory agencies as necessary, to determine the applicability of this concept to any particular generator accumulation area on a case-by-case basis.[4]

[4] At the same time, USWAG is aware of certain circumstances where the term "under the control of the operator" has been interpreted by regulators as requiring the wastes to be "in the line of sight." Such an interpretation can be overly conservative if an operator has a collection drum in a locked enclosure, or if the opening to the collection container is locked and stored in an area with a concrete pad and curbing. Obviously, an SAA container can be "under the control of the operator" when it is in a closed and locked enclosure near the point of generation. Consistent with our comments above, such "black and white" interpretations of what constitutes a valid SAA can result in barring otherwise qualified areas from serving as effective and environmentally protective SAAs. USWAG urges EPA to clarify that there is *not* an absolute bar to an area that is "not in the line of sight" of the operator from qualifying as an SAA.

USWAG believes, however, that there are other issues associated with the SAA rule that could benefit from further clarification. We discuss these below.

A. EPA Should Clarify That There Is No Bar To Distinct Satellite Accumulation Areas Being Located Adjacent To One Another.

One compliance issue that often arises concerns whether two containers that are directly adjacent can each be legitimate and distinct SAAs. While USWAG believes that this clearly can be the case, confirmation of this position is warranted.

EPA has indicated that no "bright line" test exists for determining whether single or separate SAAs exist for a given location, stating:

> It's not possible in a memo for the Agency to delineate for all situations what constitutes a single SAA versus what constitutes separate SAAs. The regulations state that a generator may accumulate hazardous waste "in containers 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."

Memorandum on Frequently Asked Questions about Satellite Accumulation Areas from Robert Springer, Director, Office of Solid Waste, to RCRA Directors, EPA Regions 1-10 (March 17, 2004). While EPA has not directly addressed this issue, a RCRA-authorized state, Tennessee, has evaluated directly the issue concerning the required proximity between SAAs. In finding that legitimate SAAs *can* be side-by-side, the Tennessee Department of Environment and Conservation ("TDEC") determined that SAAs "**are normally used to manage one waste generated by an individual industrial process**," and nothing in the regulation otherwise limits the proximity between SAAs. Memorandum from Mike Apple, Director, Division of Solid Waste Management, State of Tennessee, Department of Environment and Conservation, (March 16, 2004) (emphasis added). In reaching this finding, TDEC examined EPA Region 4 guidance on the allowable proximity between SAAs and found that Region 4 considers "that the

determination on whether or not adjacent satellite accumulation areas are two distinct satellite accumulation areas should be made on a case-by-case basis." *Id.* at 3. TDEC set forth four criteria that, if met, would qualify adjacent containers as distinct SAAs:

> If the generator is able to substantiate that (1) each container was (2) at or near their respective point of generation, and (3) they are placed where wastes initially accumulated from those respective points of generation, and (4) they are both under the control of the operator of the process generating the waste, then we would say that both containers are considered to be in separate satellite accumulation areas.

Id. at 4.

USWAG recommends that EPA clarify that there is no bar on legitimate and distinct SAAs being located adjacent to one another. USWAG is particularly concerned that, without this clarification, enforcement personnel agencies may incorrectly presume that two adjacent containers cannot qualify as distinct SAAs even if the above conditions are met. USWAG is concerned that given the confusion that prompted the request to TDEC, there are other generators and regulatory agencies who are equally confused about the required proximity between SAAs. Therefore, clarification, consistent with that of the State of Tennessee, is warranted.

B. EPA Should Allow Facilities To Maintain A Single Satellite Accumulation Area For Hazardous Wastes That Are Generated Throughout A Facility.

USWAG recommends that EPA codify the concept expressed in an earlier EPA interpretive letter regarding the appropriateness of locating an SAA in a central location for similar wastes generated at widely-dispersed locations throughout a facility. This could include, for example, the removal and replacement of small mercury-containing switches or other mercury-containing devices from equipment (*e.g.*, lighting fixtures) that are located in literally hundreds of different locations throughout a facility. Requiring individual SAAs to be located "at or near" the points of generation in the case

of these widely generated and common wastes is not practical and would result in the unwieldy scenario of potentially hundreds of SAAs throughout a facility with each SAA holding only a de minimis amount of hazardous waste.

EPA recognized the impracticality of this scenario in an earlier letter concerning the centralized accumulation of "universal waste" type[5] hazardous wastes, wherein the Agency explained that an SAA for such commonly generated wastes could include a "specific" and centralized collection point. EPA explained that "for like wastes generated from many individual locations (e.g., nickel-cadmium batteries), we would interpret the at or near the point of generation . . . language to include a specific satellite area designated by the generator that facilitates the accumulation of this material . . . ." *See* attached letter from Sylvia K. Lowrance, Director, Office of Solid Waste, to D. B. Redington, Director, Regulatory Management, Monsanto Company (Feb. 23, 1993).

USWAG believes the concept expressed in the "Lowrance" letter makes eminent sense and suggests that EPA either codify this concept in the SAA rule or expressly reiterate this principle in the preamble to any final rule that evolves from this rulemaking initiative. This will help ensure that RCRA-authorized states and generators across the country are appropriately aware of this practical application of the SAA rule.

C. EPA Should Clarify That An SAA Can Change Locations As The "Point of Generation" Moves.

USWAG requests that EPA clarify that a single SAA can change locations if the point of generation of the waste being collected within the SAA also changes locations.

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[5] EPA was using the term "universal waste" in this letter only as a descriptive characteristic of a commonly generated waste, and made clear that it was not referring to "universal wastes" subject to the tailored management standards under 40 C.F.R. Part 273 as this latter category of waste is not subject to RCRA's hazardous waste generator rules.

This type of scenario can occur in a setting where a generator is engaged in a single project within a facility that requires moving from location to location resulting in the generation of small amounts of hazardous waste at each individual location.

An example of this scenario is a lead-based paint abatement project where abatement staff move from tank to tank engaging in lead paint removal from various tanks. In these circumstances, it is common for the lead paint chips removed from a particular tank to be placed in an SAA container and for the same container to be moved from one tank to another tank as part of the common lead abatement project. During this process, the container is being managed in accordance with applicable SAA requirements (*e.g.*, labeled "hazardous waste") and if the paint chips in the container ever exceed the SAA 55-gallon limit, the container is moved to the requisite centralized accumulation area.

USWAG believes that the use of a single container in the above circumstances is fully consistent with the SAA rule, as the container is being used to collect the wastes "at or near the point" of generation and all operative conditions of the SAA rule are being met. Any other interpretation would result in the impractical scenario of having to transport de minimis amount of waste accumulated at each particular tank directly to a centralized collection area. USWAG appreciates that this is a rather unique scenario and generally only would be applicable in circumstances where the SAA container is collecting the same waste from multiple locations involved in a common project at a single facility. Nevertheless, confirmation of this SAA practice would be useful.

IV. Tailored Regulations Are Necessary For Episodic Generator Events.

As the Agency is well aware, the regulatory compliance problems associated with so-called "episodic" generators have long plagued the regulated community and EPA

and RCRA-authorized state environmental agencies. In fact, at the EPA public meeting in Washington, D.C. this Spring regarding the generator rulemaking initiative, a state regulator from Florida was first to raise the practical compliance problems associated with episodic generator events and the need for a practical solution to these sporadic hazardous waste generation episodes. There was near unanimous support on this point by other attendees at the meeting.

While there is no defined term of an "episodic generator," the concept involves entities who, only on occasion and often unexpectedly, generate hazardous wastes in quantities large enough to trigger RCRA's regulatory requirements for either small quantity generators ("SQGs") or large quantity generators ("LQGs") (*i.e.*, either greater than 100 kilograms of non-acutely hazardous waste per month for a SQG or greater than 1,000 kilograms of non-acutely hazardous waste per month for a LQG).

For example, if an entity that is generally a conditionally exempt small quantity generator ("CESQG") (*i.e.*, generates less than 100 kilograms of hazardous waste in a month) happens to generate 100 kg of waste in any given month (say, for example, as a result of a one-time accidental spill of a commercial chemical product), such entity would immediately be classified for that particular month as an SQG. This classification would automatically and immediately subject such entity to the regulations applicable to any other SQG, including, among others, obtaining an EPA identification number (40 C.F.R. § 262.12(a)), storing the regulated hazardous waste in compliance with specified storage standards (*id*. at § 262.34(d)(2-3)), complying with standards for preparedness and prevention (*id*. at § 262.34(d)(4)), and implementing contingency plans, emergency procedures, and personnel training requirements (*id*. at § 262.34(d)(5)). This is the case even if for every other month of the year the entity qualifies as a CESQG and its

annual hazardous waste generation is much less than the 1,200 kg annually allowed (100 kg per month) for CESQGs.

This scenario is even more problematic if, in the above example, the spill event thrusts the CESQG into LQG status (*i.e*., more than 1,000 kilograms of hazardous waste are generated as a result of the one-time spill event). In this case, the entity would immediately be expected to comply with additional storage standards (*id*. at §§ 265.176 & 265.178), prepare a written contingency plan (*id*. at § 265.50 *et seq*.), have in place formalized personnel training programs (*id.* at § 265.16), and file biennial reports (*id*. at § 262.41).

Obviously, the above scenarios present impractical and unnecessary compliance dilemmas. First, any unplanned episodic generator event that thrusts a CESQG into SQG or LQG status, or an SQG into LQG status, places the generator into an immediate non-compliance scenario. This is because, in most cases, the entity will not have the procedures and plans in place applicable to the elevated generator category into which it unexpectedly finds itself. To expect entities to have SQG and LQG requirements in place in the *event* of a spill would, as a practical matter, require virtually all entities to operate as either an SQG or LQG because most entities at least have the *potential* for a spill event that would exceed one of these regulatory thresholds. Obviously, this is not a practical alternative.

Second, because the elevated generator status is only temporary, it often makes no sense for the entity to scramble to put the necessary procedures and plans in place because, by the time such requirements are met, the waste most likely will have been transported off-site and the facility will have reverted back to its normal status as a CESQG or SQG. This latter problem is also applicable in those circumstances where

there may be a planned episodic event – such as the four- to five-year cycles where utilities generate wastes from cleaning of boiler tubes. Here, a utility may be a LQG for *one month* out of a five-year cycle, while remaining a CESQG for the remainder of the five-year cycle. In these circumstances, it does not seem practical or necessary for the utility to comply with the requirements applicable to entities that routinely and normally operate as LQGs.

To address the regulatory and practical problems associated with episodic generation events, EPA should provide reduced regulatory requirements tailored to the episodic and temporary nature of such circumstances. For example, in the case of an unplanned generation event – *e.g.*, a fire or spill – the most practical steps for the generator to take is to immediately notify local regulators and provide facility-specific contact information. This would allow regulators to respond, if necessary, and provide a means for regulators to confirm the episodic nature of the generation event. In lieu of requiring preparation of a facility-wide contingency plan or implementation of formal training programs, an episodic generator could prepare a short-term contingency plan, as necessary, focusing on the episodic event itself and implement any emergency response measures called for under pre-existing facility response plans (*e.g.*, SPPC, Oil Discharge Contingency Plan, Homeland Security Plans, etc.).

In terms of management standards, the hazardous waste could be placed in tanks or containers meeting performance-based standards and label/marking requirements similar to those applicable to units used to manage "universal wastes" under 40 C.F.R. Part 273 (*e.g.,* non-leaking, structurally sound units that are compatible with the waste and lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and labeled/or marked with the term

"hazardous waste"). The facility also would notify EPA or authorized State in a specified period of time (*e.g.*, within 30 days) confirming that it has reverted back to its original generator status. The above tailored standards also could be used in the case of planned, episodic events, such as hazardous wastes generated during boilers cleanings that occur once every several years.

These focused standards would ensure adequate protection of human health and the environment without unduly burdening facilities with requirements that, but for the episodic event, would otherwise not be required.

V. EPA Should Codify The Ability of Generators To Treat Wastes In Qualified Accumulation Units.

USWAG recommends that, as a housekeeping item, EPA formally codify the Agency's long-standing position expressed in a series of interpretive letters and preamble language that generators can treat hazardous waste in qualified accumulation units under the applicable generator accumulation provisions of 40 C.F.R. § 262.34. As EPA correctly reasoned in 1986 when explaining this position:

> Of course, no permitting would be required if a generator chooses to treat their hazardous waste in the generator's accumulation tanks or containers in conformance with the requirements of § 262.34 and Subpart J or I of Part 265. Nothing in 262.34 precludes a generator from treating waste when it is in an accumulation tank or container covered by that provision.

51 Fed. Reg. 10146, 10168 (March 24, 1986); *see also* Letter from Marcia E. Williams, Director, Office of Solid Waste, to Kevin A. Lehner, RMT, Inc. (July 25, 1986). The ability of generators to treat hazardous wastes in accumulation units under 40 C.F.R. § 262.34 has proven to be an environmentally sound option to conduct qualified treatment operations incidental to normal generator activities (*e.g.*, preparing waste for off-site shipment to a commercial TSDF) without the burden of RCRA's permitting process. Like the SAA rule, this aspect of the generator rules has proven over the last

two decades to be one of the most practical components of the generator program, as it allows entities to engage in functions that are integral to the generation of any hazardous waste and that are appropriately distinct – as determined by the limited time frame and treatment options – from treatment activities otherwise subject to RCRA's permitting program.

Notwithstanding that EPA has taken the above position since at least 1986, confusion regarding the ability of generators to treat in qualified generator accumulation units still arises on occasion, especially with less experienced staff in state agencies. Therefore, USWAG believes that EPA should formally codify the ability of generators to treat wastes in the regulatory text of 40 C.F.R. § 262.34.

VI. EPA Should Allow for Multiple-Generator ID Numbers For a Single Facility.

An issue related to the episodic generator matter (*see* issue IV above) involves the practical problems that arise regarding the issuance of generator identification ("ID") numbers. *See* 40 C.F.R. § 262.12. Under the current regulatory regime, generator ID numbers are generally assigned to entities based on the street location or address of the generator. During construction or maintenance operations at a particular site, however, there can be multiple "generators" at one location (*e.g.*, separate contractors engaged in distinct activities that may each generate hazardous waste). Requiring each of these individual activities to operate under a single generator ID number when they are truly independent operations causes practical and regulatory complications.

For example, a facility that normally operates as a small quantity hazardous waste generator may unexpectedly find itself thrust into large quantity generator status if a contractor engaged in a one-time maintenance event at the site generates hazardous waste and is required to use the facility's existing generator ID number. In these

circumstances, the site owner/operator is burdened with the contractor's waste generator activities for purposes of determining the site's generator status. In addition, sharing a RCRA generator ID number for two entities that are truly distinct can cause complicated commercial and regulatory disputes between the entities.

USWAG believes that the process for issuing RCRA generator ID numbers should be flexible enough to accommodate separate and distinct ID numbers when there are truly one or more generators operating at the same location. This could be done, for example, through the issuance of a separate, temporary ID number for an on-site contractor at a location that already has a pre-existing generator ID number. While USWAG appreciates that some RCRA authorized states attempt to address these circumstances on a case-by-case basis, this issue is of general concern to many generators across the country and therefore warrants a practical solution at the federal level.

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USWAG appreciates the opportunity to submit comments on this important rulemaking initiative and looks forward to working with EPA as it begins to implement reforms to the hazardous waste generator regulations.