

December 23, 2015

RCRA Docket  
Environmental Protection Agency  
Submitted via the Federal Rulemaking Portal: <http://www.regulations.gov>

Docket No. EPA-HQ-RCRA-2012-0121.

Dear Sir or Madam:

The Connecticut Department of Energy and Environmental Protection (“CT DEEP”) has reviewed EPA’s September 25, 2015 Notice of Proposed Rulemaking entitled “Hazardous Waste Generator Improvements.” CT DEEP generally supports this proposed rule, and believes that it will improve both the effectiveness of the RCRA hazardous waste generator requirements and make them easier for generators to understand and to follow. However, CT DEEP has a number of comments on the proposed rule, which are detailed in the following numbered sections.

- 1.) Preamble Section IV.B.1. In general, CT DEEP concurs with EPA’s proposal to relocate the “counting requirements” that determine hazardous waste generator category (i.e., CESQG vs. SQG vs. LQG) into a new, separate section in the generator regulations. CT DEEP believes that this will make the generator regulations much more transparent and easy-to-understand, as well as easier for CT DEEP to enforce. However, DEEP is concerned about EPA’s proposal to amend the regulations to state that the maximum accumulation amounts for each generator category are “conditions for exclusion” rather than “independent requirements” (see Comment 9 below for more on this issue).
- 2.) Preamble Section VI.A.1. CT DEEP supports EPA’s proposal to add definitions for the three generator categories and for the terms “acute hazardous waste” and “non-acute hazardous waste.” CT DEEP agrees with EPA that this helps clarify the regulation and define important terms that had not previously been defined in a clear way. However, CT DEEP has concerns about the omission from the definitions of the generator categories of the applicable accumulation limits, since this could have certain enforcement implications for responding to violations of these requirements noted during CT DEEP inspections (see Comment 9 below for more on this issue).
- 3.) Preamble Section VI.B. CT DEEP supports EPA’s proposal to rename conditionally exempt small quantity generators (“CESQGs”) as “Very Small Quantity Generators.” CT DEEP feels that this term is much easier to understand and is less stilted and regulatory in tone than the current term. Please note that although CT DEEP supports this change, this

category of generators will still be referred to as CESQGs in the remainder of these comments.

- 4.) Preamble Section VI.C. CT DEEP supports EPA's proposal to add a definition for "central accumulation area" to the regulations. This is a term that is often used for practical purposes in the RCRA program, to distinguish a generator's main hazardous waste storage area from its satellite accumulation areas.
- 5.) Preamble Section VI.B.1. In this section, EPA discusses the fact that the so-called "mixture and derived from rules" do not apply to CESQGs. These rules clarify that when listed hazardous wastes are mixed with other solid wastes, or are created as the result of the treatment of hazardous waste, they remain subject to regulation as listed hazardous wastes. The purpose of this rule is to prevent generators from rendering their wastes non-hazardous by intentionally diluting them. CT DEEP is concerned that this statement by EPA could have significant unintended consequences, especially in Connecticut since our statutes and regulations are more stringent in that we do not allow CESQGs to dispose of any amount of hazardous waste (mixed or not) with non-hazardous solid waste (i.e., trash).
- 6.) Preamble Section VII.B.2. CT DEEP has concerns about proposed clarifications to the requirements that apply to SQGs and LQGs that mix hazardous waste with non-hazardous solid waste. Although CT DEEP understands what EPA is trying to accomplish with these clarifications, we are concerned that they could encourage mixing and improper disposal of hazardous waste.
- 7.) Preamble Section VII.C. CT DEEP supports EPA's proposal to allow CESQGs to send hazardous waste to an LQG operated by the same "person." CT DEEP agrees with EPA that this will allow for more convenient and less costly means for these CESQGs to manage their wastes, particularly for small amounts of waste generated at construction or demolition worksites, and small amounts of waste generated by utilities at numerous remote locations. CT DEEP also agrees with EPA that this provision could allow for improved management of CESQG wastes by allowing it to be transferred to LQG sites where there are more knowledgeable personnel and stricter controls over the management of the waste, and would also increase potential opportunities for the recycling of CESQG waste. However, CT DEEP does have two concerns regarding EPA's interpretation of the term "same person."

The first concern relates to sites where a contractor is generating waste (as a co-generator with the property owner) and assumes responsibility for the waste. In particular, it is not clear from the preamble language whether or not contractors in such cases would be able to avail themselves of the proposed provision and transport CESQG waste to an LQG site that they operate, such as their home location. CT DEEP believes that the CESQG-to-LQG provision should be allowed to apply to these kinds of cases, since these types of wastes are often generated at sites where the owner does not have the facilities to store the waste (e.g., at a highway bridge repainting site).

The second concern relates to the extent to which the term “same person” applies to situations involving corporate parents and subsidiaries. Would a CESQG site operated by a subsidiary of a corporation be able to send their waste to an LQG site operated by a parent corporation, or vice versa? CT DEEP is concerned about the application of the term “same person” traveling too far up or down the corporate chain, as these entities are often under completely separate leadership and direction, which may lead to the mismanagement of the waste that is transferred in these types of situations.

EPA solicited comment in this section on whether this type of allowance should be extended to SQGs sending hazardous waste to LQGs operated by the same “person,” or to CESQGs sending waste to LQGs operated by a *different* person. CT DEEP has the following comments on these two proposals:

- a.) CT DEEP believes that the transfer of SQG waste to an LQG operated by the same person could be acceptable, if carefully crafted. In particular, this provision would raise issues with respect to compliance with certain hazardous waste requirements that are not an issue for transfers of CESQG waste to LQG sites. For example, unlike CESQGs, SQGs are required to use a manifest. CT DEEP believes that it would be appropriate to continue to require the use of a manifest for the transfer of SQG waste to an LQG site operated by the same person. However such an LQG site would not meet the current definition of a “designated facility” in 40 CFR 260.10, so the definition of this term would have to be changed. Furthermore, this type of transfer of hazardous waste could cause problems with the upcoming e-manifest system, if that system is not designed or modified to recognize the LQG receiving the waste as a designated facility. Similarly, SQGs waste is subject to the transportation requirements of 40 CFR 263 when it is shipped off-site. Appropriate changes would have to be made to these requirements, as well, to authorize the movement of SQG waste to LQG sites.
  - b.) CT DEEP also believes that the transfer of CESQG waste to an LQG operated by a *different* person could be acceptable, provided appropriate safeguards and limitations are put in place. In particular, CT DEEP believes that the CESQG and LQG in this scenario should be limited to entities which have some sort of business relationship (e.g., a contract) that ties them together in some meaningful way. CT DEEP believes that limiting the provision to such entities would serve to ensure that both entities are accountable for the proper management of the waste. CT DEEP believes that allowing CESQGs to “shop around” for any random LQG that is willing to take their waste would be too close to a TSDF-type activity (which, for good reason, requires a permit under RCRA).
- 8.) Preamble Section VII.D. CT DEEP supports EPA’s proposal, as described in this section, to require recycling facilities that are exempt from RCRA permitting under the provisions of 40 CFR 261.6(c)(2) to submit biennial reports. CT DEEP agrees with EPA that the waste managed by these facilities constitutes a significant gap in the biennial

report data. CT DEEP would note that it required such facilities to submit state hazardous waste reports for many years. Inclusion of these recycling facilities in the BRS system would allow these them to use the electronic reporting software used by LQGs and permitted TSDFs, and would facilitate the efficient processing and consolidation of the information in the reports submitted by these recycling facilities.

- 9.) Preamble Section VIII.A.1. EPA is proposing to add a new section to the hazardous waste generator regulations that would distinguish requirements that generators must meet in order to qualify for an exemption for hazardous waste permitting requirements (i.e., a “condition for exclusion”) as opposed to requirements that generators must comply with pursuant to their generator category (“independent requirement”). Although CT DEEP understands that this new section merely serves to clarify how the current regulations are constructed, we are concerned that making these distinctions explicit in the regulations may limit our options for pursuing enforcement for violations of hazardous waste generator requirements.

For example, a common violation that would fall under the category of a “condition for exclusion” in the proposed new section is the length of time that a generator is allowed to store hazardous waste – i.e., 180 days for SQGs, 90 days for LQGs (CESQGs have no storage time limit). Currently, if CT DEEP (and as we understand most other states’ environmental agencies) observes a generator that has stored waste in excess of the allowed storage time limit, we have the ability to cite the generator as being in violation of the lesser violation of exceeding their accumulation time limit, or for the more serious violation of operating as a hazardous waste storage facility (i.e., a TSDF) without a permit. Under the proposed rule, CT DEEP may be limited to citing only the latter violation in all cases, even when the fact pattern does not support such a strong response (for example, in a situation in which a generator exceeds the storage time limit for just one drum for only one day). This is especially important because the latter citation is typically classified as a High Priority Violation under DEEP’s Enforcement Response Policy (which would trigger the need for a formal enforcement action, including a penalty), whereas the former violation is typically classified as Secondary Priority Violation (which would not necessitate a formal enforcement action or a penalty).

- 10.) Preamble Section VIII.A.3. In this section of the preamble, EPA proposes to delete existing §262.10(c) which discusses the requirements that apply to generators that treat their own waste, since the provision has become outdated and could be confusing. While CT DEEP agrees with EPA’s proposal in certain respects, CT DEEP requests that EPA consider revising the language of §262.10(c) to codify the long-standing EPA interpretation regarding treatment by generators in accumulation tanks and containers. CT DEEP believes that the codification of this interpretation would strengthen the ability of states to allow such treatment when it is appropriate, and prevent such treatment when it is not appropriate.
- 11.) Preamble Section VIII.A.6. CT DEEP concurs with EPA’s proposal to add language to the generator regulations indicating that generators are prohibited from transporting waste to a facility that this not a “designated facility” (i.e., a facility that is a TSDF or is

otherwise authorized to accept hazardous waste). CT DEEP often sees activities such as small amounts of hazardous waste being thrown in the trash, and welcomes this change since it would provide a clear and unambiguous way to cite such situations as a clear violation. However, CT DEEP suggests that EPA expand this language to explicitly state that generator may not place their hazardous waste in the trash, since this is a common type of mismanagement that CT DEEP inspectors often see during inspections, and a violation that it has been hard for us to cite as a clear violation under the existing rules. See also comment 28 below regarding EPA's proposal to add a provision to the generator regulations prohibiting generators from disposing of liquids in municipal solid waste landfills.

- 12.) Preamble Section VIII.B. CT DEEP concurs with EPA's proposal to revise the requirements that generators must follow to determine if their waste is hazardous ("hazardous waste determinations"). In particular, CT DEEP supports EPA's addition of language requiring that hazardous waste determinations be made at the point of generation, that the determinations must be accurate, and that generators must retain documentation of these determinations. CT DEEP notes that a requirement to document hazardous waste determinations has been included in Connecticut's hazardous waste regulations for more than 10 years, and has proven to be very effective in ensuring that generators properly classify their wastes. This documentation requirement also makes it much easier for CT DEEP inspectors to determine compliance with the hazardous waste determination requirement, and helps avoid disputes over whether or not a generator has properly classified a particular waste. Although this requirement has increased the compliance burden on generators to a certain degree, it is CT DEEP's belief that any such burden has been more than made up for by reductions in the number of enforcement actions issued for inadequate hazardous waste determinations, and by reductions in the number of misunderstandings between CT DEEP and generators during inspections about the classification of their wastes.

CT DEEP also supports EPA's proposal to clarify that generators must perform and document "negative" determinations (i.e., determinations that a waste is not hazardous). CT DEEP notes that it has always interpreted 40 CFR 262.11 as requiring this, and has consistently enforced it this way. Nevertheless, CT DEEP has had enforcement cases where the argument has been made that violations of §262.11 may only be cited in instances where the waste turns out to be hazardous, and clarifying this matter will serve to preclude those types of arguments.

In section VIII.B.9. of the proposed rule preamble, EPA solicits comment on the feasibility of developing a user-friendly electronic hazardous waste determination tool. CT DEEP believes that this is a quite feasible possibility, and has been considering developing such a tool on its own (see the CT DEEP website at [www.ct.gov/deep/hwac](http://www.ct.gov/deep/hwac), and search for the word "iCOMPASS"). Based on its research into this kind of tool, CT DEEP would suggest the following:

- If EPA decides to pursue the development of a tool like this, the tool should be

designed in such a way that it can be easily adapted to more stringent and broader-in-scope state requirements. This would allow states to custom-tailor the tool to add in particular provisions where their hazardous waste regulations may be different from the federal regulations. Since many states are more stringent or broader in scope with respect to the classification of hazardous waste, having a federal-only tool available would be of little help in those states.

- Any tool developed by EPA should not only address the possible application of exemptions in 40 CFR 261.4, but also those in §261.2 (especially 261.2(e)), 261.6, 273, and 279.
- In the preamble, EPA seems to imply that such a tool would first determine if the waste is exempt under one of the provisions listed in the previous bullet, and then determine if the waste is listed or characteristically hazardous. CT DEEP believes it should be done the other way around. That is, the tool should first determine if the waste is listed or characteristically hazardous, and then determine if it is eligible for one of the exemptions listed above. By performing the determination this way, the generator would be aware that the waste could potentially be hazardous if it is managed in a way that does not qualify it for an exemption. For example, if a generator generates a characteristic sludge, and sends that sludge for reclamation such that it is exempt from regulation, it would know that it could have a waste that may be subject to full regulation if it switches from reclamation to, say, reuse in producing fertilizers.
- The tool should provide the user with some sort of output that documents the characterization process, including the generator's answers to the key questions that produced the end result. This way inspectors and others attempting to verify the determination would be able to clearly see the basis for it.

On the matter of hazardous waste determinations, CT DEEP would also suggest that EPA consider adding a requirement for generators to repeat or "revisit" their hazardous waste determinations when appropriate. CT DEEP's hazardous waste regulations include a provision requiring generators to perform a hazardous waste determination on each waste stream at least once every twelve months or whenever there is a process or material change that could affect the waste. Although EPA's proposed language requiring that hazardous waste determinations be "accurate" addresses this issue to a certain degree, CT DEEP chose to be more explicit about when hazardous waste determinations should be repeated because it was constantly finding situations in which generators were relying on data that was years old and clearly out of date. CT DEEP would also note that the annual re-characterization requirement need not necessarily be met through total and complete reanalysis of the waste; rather, in many cases, it may be possible to use "knowledge of process" type information to document that there have been no changes to the process or the raw materials used that could have resulted in a change in the waste.

- 13.) Preamble Section VIII.C. In this section of the preamble, EPA describes its proposal to require biennial re-notification by SQGs and LQGs, so that this information is as accurate and up-to-date as possible. Under the current generator regulations, generators are required to notify EPA and/or an authorized state when they first become a generator. The purpose of the initial notification is to identify the facility name, address, property owner, facility contact information, the types of hazardous waste generated, and the types of hazardous waste activities that the generator engages in. This information is entered into a federal database (RCRAInfo) that EPA and authorized states use to track generators and for planning purposes (e.g., to decide which generators should be inspected each federal fiscal year).

Although CT DEEP supports EPA's proposal *in concept*, we are very concerned about the potential increased administrative burden that this proposal could have on authorized states, such as Connecticut, that may be responsible for entering and maintaining this data, especially as it relates to SQGs. CT DEEP is less concerned about re-notification by LQGs, since that already pretty much occurs through the biennial report process. However, Connecticut currently has about 1,500 SQGs in the state and very limited resources to process that volume of notifications – even on the proposed biennial basis, and even if a way were developed such that SQGs could submit these re-notifications electronically.

On the point of electronic re-notification, CT DEEP would note that although an on-line or electronic option would reduce data entry time, our experience is that there is often a need to follow up with the notifier to confirm that certain elements of the notification are correct and accurate. Allowing SQGs or any other generators to make unilateral unchecked changes to their notifications could at best compromise the integrity of the data in RCRAInfo, and at worst allow unscrupulous generators to attempt to remove themselves from the database.

CT DEEP would be much less concerned about the resource issue if the processing of the re-notifications was performed by EPA. However, even this scenario raises concerns in that CT DEEP would lose a certain amount of control over the data that could compromise its ability to obtain information about generators in Connecticut and appropriately select candidates for inspection.

- 14.) Preamble Section VIII.D. CT DEEP supports EPA's proposal to create a new section in the generator regulations that would require a generator to determine their generator category (i.e., very small quantity generator (CESQG), SQG, or LQG), and that specifies how a generator should make this determination. As noted in Comment 1 above, this change in large part simply involves relocating some existing requirements and adding new explicatory text. However, CT DEEP believes that this change will help make the regulations much clearer, easier to understand, and easier to enforce.
- 15.) Preamble Section VIII.E. CT DEEP supports EPA's proposal to require that generators mark their containers with the applicable EPA hazardous waste "code" numbers when

shipping their hazardous wastes off-site. CT DEEP agrees with EPA that this will make wastes easier to identify by on-site personnel, CT DEEP inspectors, emergency responders, and the transporters and TSDFs that the containers are shipped to. However, CT DEEP is aware of certain waste streams that have very large numbers of waste codes (e.g., “lab packs”), which may make this requirement unfeasible, or may make it appropriate for some sort of alternative way of providing this information (e.g., in the case of “lab packs,” by including all the waste codes in a packing slip that is attached to the container).

- 16.) Preamble Section VIII.F.1. CT DEEP supports EPA’s proposal to require that generators mark their containers with, in addition to the currently required words “Hazardous Waste,” a description of the contents of the container and information identifying the potential hazards of the waste. CT DEEP agrees with EPA that this additional marking will enhance the safety of on-site personnel, CT DEEP inspectors, emergency responders, and the transporters and TSDFs that the containers are shipped to. CT DEEP notes that the requirement to mark containers with a description of the contents is already a requirement in Connecticut’s hazardous waste regulations and has proven very successful in improving the identification of waste containers.
- 17.) Preamble Section VIII.F.2. CT DEEP supports EPA’s proposal to require SQGs and LQGs that accumulate waste in tanks to document the amount of time that waste has been accumulated by marking the date of original accumulation on the tank itself, or by recording this information in inventory logs, tank level monitoring equipment, or tank inspection logs. However, CT DEEP requests clarification from EPA regarding how to assess compliance with the accumulation time requirements for SQGs and LQGs that store waste in tanks that receive hazardous waste from continuous flow processes (in other words, how to determine compliance with the accumulation limit requirement when waste may enter and leave the tank at different times, without the tank ever being completely emptied). CT DEEP also suggests that EPA consider creating a definition of an “empty tank” just as it has defined “empty containers.”
- 18.) Preamble Section VIII.F.3. CT DEEP supports EPA’s proposed clarification of the marking and labeling requirements for LQGs that store hazardous waste on drip pads or in containment buildings. Drip pads are typically used by companies engaged in wood preserving (of which we have only one in Connecticut). Containment buildings are typically used for the management of remediation waste (e.g., contaminated soil), and we have traditionally not seen many of these storage units in Connecticut – and those that we have seen have been durational in nature (i.e., operated only for a period of time while they were necessary to complete a remediation project).

In this section, EPA also proposes to require SQGs to comply with the same marking and labeling requirements as LQGs for their drip pads and containment buildings. CT DEEP does NOT support this part of the proposal, since we do not believe it is even appropriate for SQGs to use these types of units. These types of storage units are complicated and require a fairly high level of knowledge and expertise to properly construct and operate.

In fact, SQGs are actually prohibited from storing hazardous waste in drip pads and containment buildings in Connecticut's current hazardous waste regulations for these reasons. See also comment 25 below.

- 19.) Preamble Section VIII.F.4. CT DEEP supports EPA's proposal to require SQGs and LQGs to record the results of their inspections of their hazardous waste storage areas. CT DEEP notes that Connecticut's hazardous waste regulations have required this for more than 20 years, and this requirement has proven to be very useful in ensuring that problems in storage areas do not go unnoticed and unaddressed, resulting in exposure to on-site personnel or releases to the environment. This provision also makes certain other hazardous waste requirements more enforceable by CT DEEP because it requires the generator to document the condition of their storage areas on a regular basis, even when CT DEEP inspectors are not present to observe them.

In the preamble, EPA solicits comment on the burden associated with documenting these weekly inspections. As noted above, this has been a requirement in Connecticut for many years. CT DEEP notes that, once a proper inspection program is established, the actual documentation of inspections requires very little time. Generators also have the option of developing tailor-made inspection forms that allow them to document the required information as quickly and as efficiently as possible. CT DEEP also notes that any increased burden is offset in large part by improved compliance that in turn results in fewer violations, enforcement actions and penalties. That is, documenting inspections forces generators to police themselves and avoid violations.

- 20.) Preamble Section VIII.G. CT DEEP supports EPA's proposed improvements to the hazardous waste closure requirements for LQGs that cease using one or more hazardous waste storage areas, or that close their entire facility down. In particular, CT DEEP supports EPA's proposal to consolidate the existing closure requirements into a separate section within the generator regulations, and the proposed provision that would require a generator that closes a container storage area and that cannot completely remove all contaminated soil and/or groundwater to close the container storage area in accordance with the requirements for a hazardous waste landfill. With respect to the latter of these two changes, CT DEEP agrees with EPA that the existing regulations already require closure as a landfill for tanks for which all contaminated soil or groundwater cannot be removed, and that extending this requirement to container storage areas has been a long-standing oversight on the part of EPA.

However, CT DEEP requests clarification from EPA regarding exactly what is meant by the requirement that generators who cannot practicably remove all contaminated soils and wastes must "close the accumulation unit and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills...". In particular, must such a generator submit a Part A permit application? Should EPA or an authorized state enter such a generator into the closure and/or post-closure universe in RCRAInfo? Would such a generator become subject to site-wide corrective action?

CT DEEP also supports EPA's proposal to require LQGs to provide notification of closure of a hazardous waste storage area at least 30 days prior to beginning closure, and to provide notification within 90 days after completing closure. CT DEEP notes that such notification would allow CT DEEP to conduct an inspection, if appropriate, to either monitor the closure, or confirm that closure was properly completed. CT DEEP also notes that it has drafted amendments to Connecticut's hazardous waste regulations that are very similar to this proposal by EPA.

In addition, CT DEEP suggests that EPA consider adding a timeframe within which closure must be completed. The current closure requirements include no such timeframe, and although the notification requirements discussed above will serve to alert CT DEEP to the beginning and end of closure activities, there is nothing in the amendments that EPA is proposing that would prevent a generator from dragging closure activities out indefinitely (e.g., to avoid the expense entailed in such closure). CT DEEP notes that Connecticut's hazardous waste regulations currently require closure to be completed within 180 days of the final receipt of hazardous waste in a storage area.

CT DEEP also suggests that EPA consider some sort of closure requirements for SQGs. Connecticut's hazardous waste regulations currently require the SQGs comply with the closure requirements of 40 CFR 265.111, 265.113(a)-(c), and 265.114. These requirements were added to Connecticut's hazardous waste regulations more than ten years ago because CT DEEP had identified several instances in which SQGs had vacated a site leaving waste behind or without having properly cleaned and decontaminating their hazardous waste storage areas.

21.) Preamble Sections VIII.H1. through H.5. CT DEEP supports EPA's proposed improvements to the requirements for SQGs and LQGs regarding preparedness, prevention and emergency procedures. These improvements include:

- Clarifying which areas of a generator's site these requirements apply to;
- Clarifying and updating the procedures for making emergency arrangements with local officials and documenting those arrangements;
- The creation of a new requirement for LQGs to create an "executive summary" of their hazardous waste contingency plan that would be more amenable for use by emergency responders during an actual emergency;
- Eliminating the need for LQGs to include personal information about emergency coordinators in their hazardous waste contingency plan (e.g., home address and home telephone number), provided that the emergency coordinator can be reached at all times via an emergency contact number;
- Clarifying where required emergency and safety equipment must be kept;
- Clarifying what is meant by "immediate access to a an internal alarm or emergency communication device" for personnel involved in hazardous waste

management activities;

- Clarifying where SQGs must post the required emergency information within their facilities; and,
- Clarifying that SQGs may use contractors to clean up spills;

However, CT DEEP does not agree with EPA that the proposed “executive summary” requirement should only apply to “new” LQGs (i.e., LQGs that being operations after the effective date of the proposed rule). Rather, CT DEEP feels that the requirement should apply to all LQGs, although CT DEEP believes that existing LQGs should be allowed to postpone creating the executive summary until the next time that their contingency plan is required to be revised (e.g., to identify new hazardous waste storage areas, new emergency procedures, or changes in emergency coordinators). CT DEEP believes that all LQGs should have contingency plans with the more user-friendly executive summary, and that it makes no sense for some facilities to have them and others not to have them.

22.) Preamble Sections VIII.H.6. CT DEEP concurs with EPA’s proposed modification that would allow LQGs to employ on-line or computer-based training to meet their hazardous waste training requirements. However, CT DEEP suggests that EPA clarify (in the rule or the preamble to the final rule) that the use of such methods for training must meet the following criteria:

- Records of electronic training must include all of the information currently required for the documentation of LQG training;
- Records of training must be complete, accurate, and accessible on-site to hazardous waste inspectors during an inspection;
- Recordkeeping systems must have data integrity and security features so as to prevent them from being inappropriately altered, falsified, or lost;
- Provisions must be made for clearly identifying any persons who enter and/or modify data in the system (at a minimum, their first and last names).

23.) Preamble Section VIII.H.7. In this section EPA solicits comment on clarifying which personnel at an LQG site should receive the required hazardous waste training. CT DEEP concurs with the list of personnel that EPA proposes for this clarification, although we would suggest that EPA add to this list personnel that transfer hazardous waste from central accumulation areas to loading/unloading areas and that load hazardous waste onto transport vehicles.

EPA also solicits comment in this section as to whether LQGs should be required to provide training for personnel that manage waste in satellite accumulation areas (EPA’s current interpretation is that such personnel are not subject to training requirements). CT DEEP believes that it would be appropriate for these personnel to be trained, as least to the extent that it is relevant to their specific hazardous waste management activities.

- 24.) Preamble Section VIII.I. This section pertains to numerous changes that EPA is proposing with respect to satellite accumulation areas. These are storage areas that are located at or near the process generating the waste and that are under the control of the operator of the process generating the waste. These storage areas are subject to fewer requirements than central accumulation areas since they are closely associated with the process, and are the point at which wastes initially accumulate until they are transferred to the central accumulation area. CT DEEP generally concurs with the proposed changes, except as noted below:
- a.) CT DEEP concurs with EPA's proposal to add new requirements for the management of incompatible wastes in satellite accumulation areas operated by SQGs and LQGs. CT DEEP notes that Connecticut's hazardous waste regulations have required this for many years, and this requirement has proven helpful in preventing dangerous reactions due to co-storage of incompatible waste in satellite accumulation areas. CT DEEP would also encourage EPA to add a requirement that satellite accumulation areas be required to comply with the requirements of 40 CFR 265.31 (regarding maintenance and operation of facility to prevent fires, explosions, and releases), and 265.173(b) (regarding management of containers to prevent them from rupturing or leaking). Connecticut's hazardous waste regulations have included these requirements for more than ten years and CT DEEP believes that these requirements are important to ensure that generators operate satellite accumulation areas safely.
  - b.) CT DEEP concurs with EPA's proposal to provide an exception from the requirement to keep satellite containers closed when it is necessary either for the operation of the equipment to which the satellite accumulation container is attached, or to prevent dangerous situations, such as the build-up of extreme pressure or heat. However, CT DEEP believes that EPA should limit this new provision only to situations where keeping the containers open will not pose a threat to human health or the environment (e.g., the release of fumes from a hot waste that is stored in an open container).
  - c.) CT DEEP concurs with EPA's proposal to mark containers of hazardous waste in satellite accumulation areas with information indicating the hazards of the contents of the containers, and agrees that this information will alert workers, emergency responders, and others to the potential hazards posed by its contents.
  - d.) CT DEEP concurs with EPA's proposal to clarify what is meant by "three days" with respect to the timeframe that excess waste may be stored in a satellite accumulation area.
  - e.) CT DEEP concurs with EPA's proposal to specify a maximum weight for acute hazardous wastes in satellite accumulation areas, as an alternative to the current maximum of one quart. CT DEEP believes that the proposed 1 kilogram amount is appropriate and easier to confirm for wastes such as solids, the volume of which may be hard to determine. However, CT DEEP believes that EPA should not allow the generator to pick which limit to choose (i.e., 1 quart or 1 kilogram), but should

instead specify that the one quart limit applies to liquids and the 1 kilogram limit applies to non-liquids.

- f.) CT DEEP agrees with EPA's attempt to clarify what a generator's options are when the maximum accumulation limit is exceeded in a satellite accumulation area, but not with the language that EPA is proposing to effect this clarification. In particular, CT DEEP believes that the revised language should not focus on the "excess waste," but on the waste that was accumulated before the excess amount was generated. That is, the rule should require that the waste that was in storage before the generation of the "excess waste" be removed from the area, not just the "excess waste." This would prevent situations in which only the "excess waste" is removed time and time again, leaving the remaining waste behind indefinitely.
  - g.) CT DEEP also believes that EPA should consider adding language to the satellite accumulation area requirements that would make it clear that wastes may not be moved from one satellite area to another. This is an issue that many generators are not clear on, and that could be clarified with a small change in the language.
- 25.) Preamble Section VIII.J. In this section, EPA proposes to clarify that SQGs may store hazardous waste in drip pads and containment buildings. The existing regulations are unclear as to whether or not SQGs may store their waste in such units. CT DEEP disagrees with EPA that SQGs should be allowed to use these types of units (see Comment 18 above for CT DEEP's reasoning for this conclusion). Furthermore, CT DEEP believes that very few, if any, SQGs will be likely to need or want to operate these types of units. As noted in Comment 18 above, drip pads are typically operated by companies engaging in wood preserving (which are almost always LQGs), and containment buildings are almost always used for remediation projects that involve large amounts of waste (therefore also almost always LQGs.). CT DEEP believes that in the rare circumstance that an SQG needs or wants to use one of these units, they should be required to operate under the more protective LQG requirements.
- 26.) Preamble Section VIII.K. CT DEEP supports EPA's proposal to remove the Performance Track Regulations. CT DEEP believes this is completely uncontroversial, as the program has terminated.
- 27.) Preamble Section VIII.L. CT DEEP supports EPA's proposal to clarify the information that must be submitted by LQGs under the biennial reporting requirements and the proposal requiring that LQGs report all hazardous waste generated during the reporting year, not just for the month(s) that the generator was an LQG.

CT DEEP also generally supports EPA's proposal clarifying that LQGs must report all hazardous waste generated during the reporting year, regardless of when the waste was transferred off-site. CT DEEP agrees that this would result in a fuller and more accurate accounting of the waste generated by LQGs in Connecticut and nationally. However, CT DEEP has one serious concern about the practicality of this proposal. In particular, it may be difficult for generators to determine in a precise way the amounts of waste that

were generated at the beginning and end of each reporting year, particularly for wastes that are generated in small amounts at a time, or that are initially stored in satellite accumulation areas, since they typically do not keep the records necessary to produce this information – especially by the time that the reports are due, which could be a year or more after the fact. As an example, if a generator has a 55-gallon satellite container that begins accumulating waste in October of a non-reporting year, and continues to accumulate waste until becoming full the following March, how is that generator supposed to know how much of that 55 gallons was generated in the reporting year, and how much was generated in the non-reporting year?

- 28.) Preamble Section VIII.M. CT DEEP concurs with EPA’s proposal to add a provision to the generator regulations prohibiting generators from disposing of liquids in municipal solid waste landfills. See also Comment 11 above regarding CT DEEP’s suggestion that EPA explicitly state that generators may not place any hazardous waste in a container destined for management as a non-hazardous solid waste (e.g., trash).
- 29.) Preamble Section IX. CT DEEP generally concurs with the concept of adding a new section to the generator regulations that specify the requirements that CESQGs and SQGs must comply with if they temporarily generate larger amounts of waste as the result of an “episodic generation event.” However, CT DEEP has the following concerns:
  - a.) CT DEEP does not believe that it is appropriate or necessary to require CESQGs or SQGs that temporarily increase their generator category to submit a fully-completed hazardous waste notification form (EPA Form 8700-12), and if they don’t already have one, receive a permanent EPA ID Number as a hazardous waste generator. Currently, CT DEEP handles such situations by issuing a provisional (or “temporary”) EPA ID Number to these generators. The use of such numbers is quicker, easier, and involves less administrative investment by the generator and DEEP. In addition, the requirement to use the more-involved EPA Form 8700-12 and to obtain a permanent EPA ID Number does not appear to offer much, if any, additional benefit as opposed to requiring a temporary EPA ID Number.
  - b.) CT DEEP requests clarification from EPA regarding the generator category and the applicable requirements that would apply to an episodic generator that does not or cannot comply with the proposed new regulations. Would such a generator be merely in violation of the proposed episodic generator requirements? Or, would it be subject to full regulation under the generator category corresponding to the amount of hazardous waste that it generated during the episodic event? Or, would it be in violation of operation of a storage facility without a permit? See also comments 9, 34, and 35.b. and d. below regarding the distinction between independent requirements and conditions for exemption, and the possible effect that this may have on the enforcement options available to authorized states, such as Connecticut.
- 30.) Preamble Sections X, XI, XII and XIV. CT DEEP concurs with EPA’s proposals to eliminate obsolete text, correct typographical errors, and make conforming changes to

other sections of the hazardous waste regulations needed as a result of the changes brought about by the provisions of the proposed rule.

- 31.) Preamble Section XIII. CT DEEP generally concurs with EPA's proposal to restructure the generator regulations into the following discrete sections: (1) hazardous waste determinations and recordkeeping; (2) generator category determinations; (3) requirements for Very Small Quantity Generators (currently known as CESQGs); (4) requirements for satellite accumulation areas operated by SQGs and LQGs; (5) SQG requirements; (6) LQG requirements; and, (7) EPA ID Numbers and re-notification for SQGs and LQGs. However, CT DEEP has certain comments on the proposed language of some of these sections (see comments 32-48 below).
- 32.) Proposed Rule Language, §260.10, Definitions. CT DEEP supports the proposed additions to the definitions. In particular, CT DEEP believes that the addition of the proposed new definitions for these important terms will serve to clarify the hazardous waste generator requirements and help make them easier to understand. However, CT DEEP has the following comment regarding the proposed definitions:
  - a.) EPA should add a definition for the term "satellite accumulation area." As noted above, CT DEEP supports the proposed additions to the definitions, including the definition for "central accumulation area." However, CT DEEP believes that it would also be appropriate to include a definition of "satellite accumulation area," because that term is an important one in the proposed Part 262 generator regulations. Furthermore, CT DEEP feels that EPA should modify the definition of "central accumulation area" such that it includes any accumulation area which does not meet the definition of a satellite accumulation area.
- 33.) Proposed Rule Language, §261.33(e) and (f), Discarded Commercial Chemical Products. It is not clear to CT DEEP whether the proposed change to §261.33(e) will result in the deletion of the comment that immediately follows the language of this section. If the proposed change will result in the comment being deleted, CT DEEP is concerned that important clarifying language regarding the Hazard Codes associated with the wastes listed under §261.33(e) will be lost, making the specific Hazardous Codes associated with each waste more confusing. If EPA intends to delete the comment, CT DEEP encourages EPA to add to the proposed language indicating that the absence of a hazard code in the list indicates that the waste is associated only with the hazardous code for acute hazardous waste.

Similarly, CT DEEP is concerned that the proposed change to §261.33(f) will result in the deletion of the comment that immediately follows the language of this section, making the specific hazard codes associated with each waste more confusing. If EPA intends to delete the comment, CT DEEP encourages EPA to add to the proposed language indicating that the absence of a hazard code in the list indicates that the waste is associated only with the hazardous code for acute hazardous waste.

- 34.) Proposed Rule Language, §262.1, Terms Used in Part 262. CT DEEP supports the proposed addition of the terms “independent requirement” and “condition for exemption,” especially since those terms are used numerous times in the proposed changes to the Part 262 generator regulations. Furthermore, CT DEEP appreciates EPA’s efforts to clarify the construction and effect of the hazardous waste regulations by adding definitions for these terms. However, CT DEEP is concerned about the possible effect of the addition of definitions for these terms, and their use in the proposed changes to the Part 262 generator regulations. More specifically, CT DEEP is concerned that explicitly changing the Part 262 generator regulations to differentiate independent requirements vs. conditions for exemption may have the effect of limiting the range of options that an authorized state (such as Connecticut) will have when pursuing enforcement for violations of hazardous waste generator requirements. See comment 9 above and comments 35.b. and d. below for more on this issue.
- 35.) Proposed Rule Language, §262.10, Purpose, Scope and Applicability. CT DEEP generally supports the proposed language changes to this section, especially as they relate to EPA’s efforts to clarify the construction and effect of the hazardous waste regulations with respect to independent requirements and conditions for exemption. CT DEEP especially supports the proposed new §262.10(a)(3) that makes it clear that generators may not send wastes to facilities that are not “designated facilities.” CT DEEP believes that the addition of this language fills an important gap in the RCRA generator requirements and would for the first time provide authorized states such as Connecticut with a clear and unambiguous way to cite violations for the improper disposal of hazardous waste. However, CT DEEP has the following concerns with the proposed language of §262.10:
- a.) CT DEEP is not clear on the meaning and significance of the word “unless” in proposed §262.10(a)(1). In particular, it is not clear to CT DEEP what would be the status of a very small quantity generator (currently referred to as a CESQG) if it does not “meet the conditions for exemption of §262.14.” In particular, what would be the regulatory status of such a very small quantity generator? Would it be: (1) merely a non-compliant very small quantity generator, subject to enforcement for violation any condition(s) for exemption it does not meet; or (2) subject to regulation as a SQG, and liable for violations of any of the SQG conditions for exemption and/or independent requirements; or, (3) subject to regulation as an LQG and liable for violations of any of the LQG conditions for exemption and/or independent requirements; or, (4) a hazardous waste treatment, storage or disposal facility operating without a permit? This question also raises the same issue regarding enforcement options for authorized states that was raised in comments 9 and 34 above and comments 35.b. and d. below.
- b.) CT DEEP has concerns about the effect of proposed section 262.10(a)(2) with respect to the enforcement options for authorized states that observe violations of conditions

for exemption at hazardous waste generator sites. Under the proposed language, EPA explicitly states that such a generator would be “a facility that stores hazardous waste” and “subject to the applicable requirements of parts 124, 263 through 27, and Section 3010 of RCRA” (i.e., RCRA permitting requirements). CT DEEP is concerned that the proposed language may preclude the use of informal actions for minor violations of conditions for exemption by generators (e.g., the accumulation of a very small amount of waste for greater than the allowed accumulation time limit). In particular, CT DEEP is concerned that an authorized state (such as Connecticut) may have no option in such a case but to cite the generator in violation of operating a hazardous waste storage facility without a permit (which is typically classified as a high-priority violation requiring formal enforcement action and a penalty). CT DEEP believes that this would unnecessarily and inappropriately restrict its ability to respond in a manner that is appropriate to the severity of the actual violation, and would drastically limit its enforcement options in responding to such violations. See also comments 9 and 34 above and comment 35.d. below concerning this same issue.

- c.) Proposed §262.10(g)(1) twice uses the term “applicable requirement.” Should this term actually be “independent requirement?” The use of the latter term would appear to make more sense given the context of the section, and the fact that the following section sets forth the enforcement consequences for generators that are cited for violations of conditions for exemption.
  - d.) CT DEEP finds proposed §262.10(g)(2) confusing and does not understand what is the actual regulatory effect of this section. This section appears to be saying that a violation of a conditional exemption by a generator is not itself enforceable, but would be enforced by a failure to comply with “one or more independent requirements in 40 CFR part 124, 262 through 268, or 270, or of the notification requirements of section 3010 of RCRA.” However, this section is not clear regarding which independent requirements would be enforceable in such a situation. In particular, would it be the independent requirements of 40 CFR Part 124 and 270 regarding the requirement to have a storage facility permit, or would it be one of the independent requirements of proposed §§262.14 through 262.17? If the latter, which sections? Once again, CT DEEP is concerned that this paragraph may restrict the enforcement options of authorized states such as Connecticut when responding to violations of conditional exemptions by generators. See comments 9, 34, and 35.b. above for more on this issue.
- 36.) Proposed Rule Language, §262.11, Hazardous Waste Determinations. CT DEEP strongly supports the proposed changes to §262.11. CT DEEP believes that these changes make important clarifications regarding: (1) the need to perform so-called “negative determinations”; (2) the point in time at which hazardous waste determinations must be made; (3) clarification of the types of knowledge of process that are acceptable when making hazardous waste determinations; and (4) the need for generators to

document the basis for their determinations. However, CT DEEP has the following comments on proposed §262.11:

- a.) Proposed §262.11 states that a generator must determine if a waste exhibits one or more of the characteristics of hazardous waste “by following the procedures in either paragraph (d)(1) or (2) of this section” [emphasis added]. CT DEEP notes that generators often use both analytical testing in accordance with 40 CFR Part 261 (paragraph (d)(1)) and knowledge of process information (paragraph (d)(2)) when performing a hazardous waste determination for a particular waste stream, and considers this acceptable (if not preferable in some cases), provided that it results in an accurate determination. For example, a generator may use knowledge of process to rule out the characteristic of toxicity for herbicides and pesticides, but use analytical testing (e.g., a TCLP test) to assess the waste for the remainder of the toxicity characteristic. CT DEEP believes that EPA should modify this language to clarify that both procedures may be used in this manner.
- b.) CT DEEP supports the language in proposed §262.11(d)(2) which clarifies that analytical tests other than those set forth in 40 CFR Part 261 may be used as part of a generator’s “knowledge of process” information in making a hazardous waste determination. CTDEEP has interpreted the existing §262.11 as allowing this, and believes that such information can be useful as part of a larger body of information used to make a determination, provided it is technically sound and accurate.
- c.) As noted above, CT DEEP strongly supports the proposed recordkeeping requirements of proposed §262.11(e). CT DEEP has had a very similar requirement in our state regulations for more than ten years, and this requirement has proven exceptionally effective at ensuring that generators properly perform hazardous waste determinations, in preventing misunderstandings between generators and CT DEEP regarding waste determinations, and in avoiding the need for inquiries for additional information pursuant to RCRA inspections. However, CT DEEP believes that this requirement should not just apply to SQGs and LQGs under the proposed rule, but also to very small quantity generators (CESQGs). CT DEEP’s hazardous waste regulations currently require CESQGs to document their hazardous waste determinations, and CT DEEP has found that this requirement has proven very important to ensuring that CESQGs are properly classified as such. Without documentation of proper waste determinations, it can be difficult (or impossible) to determine if the generator is truly a CESQG.
- d.) §262.11(e) includes the statement that “[g]enerators may wish to segregate any of their municipal solid waste from other solid and hazardous waste to avoid potential co-mingling.” It is not clear to CT DEEP whether EPA included this language to: (1) simply offer helpful advice; or (2) imply that a generator can avoid having to perform a waste determination on their municipal solid waste by keeping it separate from

other solid wastes and from hazardous wastes, either of which could contaminate it and necessitate a waste determination. CT DEEP has no issue with the former; however if it is the latter, CT DEEP would point out that any number of items might wind up in “municipal solid waste” that could render it hazardous, if generated at a non-residential site. This could include items such as rechargeable batteries, fluorescent lamps, cleaning products, aerosol cans, etc. As a result, CT DEEP believes that it is necessary for generators to perform waste determinations even on the municipal solid waste that is produced at their site. However, this determination need not be exhaustive; rather, it can often simply consist of routinely checking municipal solid waste containers for items such as the above, establishing procedures for the proper management of such materials, and training on-site personnel so that they do not place these items in the site’s municipal solid waste. CT DEEP requests that EPA clarify the meaning and intent of this language so that it is not misinterpreted as a statement that municipal solid waste is categorically non-hazardous and exempt from waste determination requirements.

e.) Further along in proposed §262.11(e), there is a statement that “[t]he records must include, but are not limited to, the following types of information...”. CT DEEP believes that the words “as applicable” should be added onto the end of the above language, since not all of the information listed would be necessary for every waste determination.

37.) Proposed Rule Language, §262.13, Generator Category Determination. CT DEEP supports the proposed new section for Generator Category Determination. In particular, CT DEEP supports the relocation of the “counting rules” for determining generator status from §261.5, where it was often difficult for SQGs and LQGs to find them, into a new, stand-alone section. CT DEEP also supports the concept of affirmatively requiring generators to determine their generator category. During inspections, CT DEEP often finds that generators have either not determined their generator category, or have determined it incorrectly. This often requires the collection of additional information from the generator merely in order to determine which set of rules applies to them. Having an affirmative requirement like this will enable authorized states such as Connecticut to cite a violation for failure to make a generator category determination right at the outset, rather than to have to wait for the necessary information so that we may properly categorize the generator. However, CT DEEP has the following comments on the language of proposed §262.13:

a.) CT DEEP believes that the proposed §262.13(a) is potentially confusing and should be rephrased. In particular, the proposed language appears to imply that a generator must determine their generator category each and every calendar month and is not clear what the implications of such variation might be. CT DEEP would suggest that the beginning of proposed §262.13(a) be replaced with something like the following:

*Determination required.* A generator of hazardous waste must determine their generator category. A generator's category is defined based on the amount of hazardous waste generated each month, and may change from month to month. For the purposes of notification as required by §262.18 of this chapter and compliance with the generator requirements of §§262.14, 262.16, and 262.17 of this chapter, a generator's category would be the category associated with the greatest amount of waste generated in any calendar month throughout the year, except as provided for by §262 Subpart L. This section sets forth... [the remainder of the language would remain unchanged.]

38.) Proposed Rule Language, §262.14, Conditional Exemption for a Very Small Quantity Generator. CT DEEP generally supports this proposed language. In particular, CT DEEP supports the relocation of the CESQG requirements from §261.5 to Part 262, along with the other generator requirements. CT DEEP believes that this relocation and consolidation makes the hazardous waste generator requirements much easier to understand and comply with. CT DEEP, does, however, have the following comments on proposed §262.14:

- a.) Proposed §§262.14(a) and (a)(3) discuss the effect of violations by a very small quantity generation of the specified conditions for exemption. CT DEEP reiterates its concerns as expressed in comments 9, 34, and 35.b. and d. above regarding the limiting effect that this kind of language may have on the enforcement options that are available for authorized states such as Connecticut.
- b.) Proposed §262.14(a)(2) requires a very small quantity generator (CESQG) to comply with proposed §§262.11(a) through 262.11(d), but not §262.11(e). CT DEEP reiterates its comment as noted in comment 36.c. above that very small quantity generators should be required to maintain documentation of their waste determinations.
- c.) Proposed §262.14(a)(3)(i) states that if a very small quantity generator (CESQG) accumulates greater than 1 kg of acute hazardous waste at any one time, then “all quantities of that acute hazardous waste [would be] subject to full hazardous waste regulation under parts 124, 262 through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA.” This language is clearly meant to imply that such a generator would be subject to regulation as a LQG, but does not specifically say so. The language of this section should be clarified to make this explicit so that very small quantity generators (CESQGs) will be absolutely clear on the consequences of exceeding the 1 kg accumulation limit for acute hazardous waste.
- d.) Similarly, proposed §262.14(a)(3)(ii) states that if a very small quantity generator (CESQG) accumulates greater than 1,000 kg of non-acute hazardous waste at any one time, then “all quantities of that hazardous waste [would be] subject to full hazardous

waste regulation under parts 124, 262 through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA.” This language is clearly meant to imply that such a generator would be subject to regulation as a LQG, but does not specifically say so. The language of this section should be clarified to make this explicit so that very small quantity generators (CESQGs) will be absolutely clear on the consequences of exceeding the 1,000 kg accumulation limit for non-acute hazardous waste.

- e.) Proposed §262.14(a)(4)(viii)(A) states that the proposed provision allowing very small quantity generators (CESQGs) to send hazardous waste to an LQG under the control of the same person does not extend to “contractors who operate generator sites on behalf of a different person as defined in §260.10 of this chapter...”. CT DEEP is not clear about what kinds of situations EPA is seeking to prevent through this provision, and requests clarification on the meaning and intent of this language. Furthermore, CT DEEP believes that a contractor that operates as a co-generator with a property owner at a work site should be able to avail themselves of this provision and take the CESQG waste they generate at the work site to their home location, provided that home location meets the other requirements of this provision (in particular, the home location is an LQG). CT DEEP believes that some of the biggest potential beneficiaries of this proposed provision generate waste at work sites like these (e.g., contractors, utility companies, etc.).
- 39.) Proposed Rule Language, §262.15, Satellite Accumulation Area Regulations for Small and Large Quantity Generators. CT DEEP supports the creation of a new, stand-alone section for satellite accumulation areas (“SAAs”), and the improvements that have been made to the requirements for SAAs. CT DEEP has the following specific comments on this proposed language:
- a.) Proposed §262.15(a) discusses the effect of violations by generators managing waste in SAAs of the specified conditions for exemption. CT DEEP reiterates its concerns as expressed in comments 9, 34 and 35.b. and d. above regarding the limiting effect that this kind of language may have on the enforcement options that are available for authorized states such as Connecticut.
  - b.) CT DEEP believes that the following language should be added to the end of proposed §262.15(a)(1): “, in accordance with §262.16 or 262.17, as appropriate.” Such language would make it very clear to the generator managing the waste in a SAA what they would need to do with a leaking or poor-condition container.
  - c.) Proposed §262.15(a)(6) discusses what must be done with the “excess” waste when more than the allowed amounts are accumulated in a SAA. While CT DEEP believes that proposed language improves the existing language in 40 CFR 262.24(c)(2), it retained one confusing part of the old language that CT DEEP believes should be modified. In particular, by referring to the “excess” waste, the language seems to

imply that the waste that must be removed within three days under this requirement is the waste that was most recently generated and that resulted in the exceedance of the accumulation limit for SAAs. In reality, what happens in most cases is that the generator removes the older waste, and continues to accumulate the most-recently generated waste. For example, if a generator has a 55-gallon drum in a SAA and that drum becomes full, the generator might begin accumulating newly generated waste in a second 55-gallon drum. By referring to the “excess waste,” the language of the rule seems to imply that the generator must remove the newly-generated waste in the second 55-gallon drum within three days, rather than the full 55-gallon drum. Not only is the use of the word “excess” confusing in this way, it could actually produce the unintended result of allowing the “old” container to remain in the SAA indefinitely, while the “new” waste is removed every three days.

- 40.) Proposed Rule Language, §262.16, Conditions for Exemption for a Small Quantity Generator that Accumulates Hazardous Waste. CT DEEP supports the creation of a stand-alone section for SQGs that incorporates all the SQG requirements that under the current rules are referenced from other portions of Part 262 or from Part 265. However, CT DEEP has the following comments on proposed §262.16:
- a.) Proposed §262.16(a) discusses the effect of violations by SQGs of the specified conditions for exemption. CT DEEP reiterates its concerns as expressed in comments 9, 34, and 35.b. and d. above regarding the limiting effect that this kind of language may have on the enforcement options that are available for authorized states such as Connecticut.
  - b.) Proposed §262.16(b)(2)(iv) makes reference to “paragraph (a)(2)(i) of this section.” CT DEEP believes this is a typographical error, and that the citation should instead refer to “paragraph **(b)**(2)(i) of this section.”
  - c.) Proposed §262.16(b)(3)(i) is noted as “reserved.” It appears that this section was reserved because it corresponds to language in the current §265.201(a) that became superfluous and that was removed when the language of this section was transcribed into proposed §262.16(b)(3). However, since proposed §262.16(b)(3) does not involve a change to a currently-existing regulation, CT DEEP sees no point in reserving this section, and if anything, believes that reserving this section will actually create more confusion than it would avoid. As a result, CT DEEP suggests completely removing proposed §262.16(b)(3)(i) and renumbering the remaining paragraphs of that section.
  - d.) Proposed §262.16(b)(3)(iii)(E) makes an incorrect reference to “§265.15(c) of this chapter.” This section does not apply to SQGs under the current or proposed federal rules.

- e.) Proposed §262.16(b)(3)(v) is noted as “reserved.” For the same reasons noted in comment 40.c. above, CT DEEP suggests completely removing proposed §262.16(b)(3)(v) and renumbering the remaining paragraphs of that section.
- f.) CT DEEP believes that the language of proposed §262.16(b)(5) is garbled and should be rearranged in a manner consistent with the similar language at proposed §262.17(a)(4).

Also, this same section includes provisions limiting the accumulation time to 90 days. Did EPA intend to include a 90-day timeframe in this section, or 180 days, as allowed for SQGs in other types of accumulation units?

- g.) CT DEEP believes that the language of proposed §262.16(b)(6)(i)(D) should be revised to add a comma after the word “begins” so that this language is consistent with the construction of proposed §§262.16(b)(6)(i)(A) through (D) as a list. CT DEEP notes that a comma is included in the corresponding language in the proposed satellite accumulation section (i.e., proposed §262.232(a)(4)(i)(D).
- h.) CT DEEP believes that the first three words of proposed §262.16(b)(7) should be changed from “[t]he generator complies” to “A small quantity generator must comply...” so as to be consistent with the wording in the other subparagraphs within proposed §262.16(a).
- i.) Although CT DEEP supports the language of proposed §262.16(b)(8) regarding preparedness and prevention for SQGs, and particularly the improvements to this language, CT DEEP has two concerns with certain portions of the language.

First, CT DEEP believes that proposed §262.16(b)(8)(ii) is not clearly written. In particular, the inclusion of the new language clarifying where the required equipment must be kept within the parenthetical in this section appears to unintentionally exempt SQGs from having the required equipment, if a storage area “does not lend itself for safety reasons to have a particular kind of equipment specified below.” CT DEEP suggests that this section be reworded to read something like the following:

*“Required equipment.* All areas where hazardous waste is either generated or accumulated must be equipped with the items in paragraphs ... of this section (unless none of the hazards posed by waste handled at the site could require a particular kind of equipment specified below). However, if the actual waste generation or accumulation area does not lend itself for safety reasons to the storage of a particular kind of equipment specified below, a small quantity generator may store the equipment in an alternate location within the generator’s site, provided that the alternate location will allow the generator to locate any equipment necessary to prepare for and respond to emergencies.”

Second, Proposed §262.16(b)(8)(vi)(A) describes how a SQG should make emergency arrangements if the Local Emergency Planning Committee (“LEPC”) should “not respond.” CT DEEP believes that the phrase “not respond” does not make sense with the removal of the “attempt to make arrangements” language from this section. As a result, CT DEEP believes that the phrase “not respond” should be replaced with something like “not respond to inquiries from the generator” to clarify what the LEPC is not responding to.

- j.) CT DEEP believes that EPA should consider adding language to proposed §262.16(c) that references the prohibition on dilution of 40 CFR 268.3. Although the language as written is correct, it may leave SQGs with a misimpression regarding the regulatory consequences of mixing hazardous waste with non-hazardous waste.
  - k.) CT DEEP believes that proposed §262.16(d) should be modified to add the word “such” after the word “accumulate” in line six of this section. CT DEEP believes this language is necessary to clarify that SQGs may only accumulate waste that must be transported over 200 miles for 270 days, not any other waste that the SQG generates.
  - l.) CT DEEP notes that proposed §262.16(e) appears to contain superfluous language (i.e., “and 270”) that should be removed. See the similar language in proposed section §262.17(b) for comparison.
- 41.) Proposed Rule Language, §262.17, Conditions for Exemption for a Large Quantity Generator that Accumulates Hazardous Waste. CT DEEP supports the creation of a stand-alone section for LQGs that incorporates most of the LQG requirements that under the current rules reference other portions of Part 262 or reference Part 265. CT DEEP also supports the incorporation of language from 40 CFR 265.17 into the proposed LQG requirements. CT DEEP’s hazardous waste regulations have required LQGs to comply with these requirements for many years, and CT DEEP considers them important to ensuring the safe operation of LQG sites. However, CT DEEP has the following comments on proposed §262.17:
- a.) Proposed §262.17(a) discusses the effect of violations by SQGs of the specified conditions for exemption. CT DEEP reiterates its concerns as expressed in comments 9, 34, and 35.b. and d. above regarding the limiting effect that this kind of language may have on the enforcement options that are available for authorized states such as Connecticut.
  - b.) The language of proposed §262.17(a)(1)(iii) uses the word “stored.” CT DEEP notes that the corresponding language in the proposed SQG regulations (i.e., proposed §262.16(b)(1)(iii)) uses the word “accumulated.” CT DEEP believes the same term should be used in both sections. Preferably the word “accumulated” should be used in both sections, since CT DEEP has noted that EPA has preferred using this term in the proposed generator regulations, inasmuch as the word “stored” connotes the

activity of a permitted storage facility rather than a generator accumulating waste prior to shipping it to a facility for storage, treatment, or disposal.

- c.) Proposed §262.17(a)(2)(vi) includes new language allowing an LQG to seek a written waiver from the local fire department for the 50-foot buffer zone requirement for ignitable and reactive waste. While concurring with the concept of with the waiver provision, CT DEEP notes that the 50-foot buffer zone requirement is a fire code requirement, and the enforcement of fire codes at the local level is typically under the jurisdiction of the local fire marshal, not the fire department. As a result, CT DEEP believes that the words “local fire department” should be replaced with “local fire marshal.”
- d.) It appears that there is a typographical error in proposed §262.17(a)(2). In particular, the word “of” appears between the words “§265.197(c)” and “Closure and post-closure care.” It appears that the word “of” should be replaced with a dash to be consistent with the remainder of the text in this section.
- e.) The language of proposed §262.17(a)(4)(ii)(A) uses the word “respecting.” CTDEEP notes that the corresponding language in the proposed SQG regulations (i.e., proposed §262.16(b)(5)(ii)) uses the word “maintaining.” CT DEEP believes the same term should be used in both sections. Preferably the word “maintaining” should be used in both sections, since CT DEEP believes that this term more clearly conveys the importance of ensuring that waste is not accumulated in excess of the allowed time limit.
- f.) CT DEEP believes that the language of proposed §262.17(a)(5)(i)(D) should be revised to add a comma after the word “begins” for the same reasons as described in comment 40.g. above.
- g.) CT DEEP notes that the language of proposed §262.17(a)(5)(ii)(A) lacks the words “or other persons on-site” at the end, as is the case in the corresponding proposed SQG language (i.e., proposed §262.16(b)(6)(ii)(A).
- h.) CT DEEP notes that the language of proposed §262.17(c)(4)(i)(C) retained the phrase “and has placed its professional engineer certification” when it was relocated from current §262.34(g)(4)(i)(C). It would appear that, to be consistent with the rephrasing of the remainder of this language that occurred when it was relocated from current §262.34(g), this language should be changed to “and must place its professional engineer certification...”. This would also make this language consistent with the phrasing used in proposed §262.17(c)(4)(i)(C)
- i.) CT DEEP also notes that the language of proposed §262.17(c)(4)(i)(C), (C)(1), and (C)(2) is not consistent in several other respects with the similar language in proposed §262.17(c)(4). CT DEEP believes that EPA should make the language of these two sections consistent with one another in all respects so that it does not create the

impression on the part of LQGs that F006 waste being accumulated for 180 days may be managed any less stringently than non-F006 waste being accumulated for 90 days.

- j.) It also appears that proposed §262.17(c) lacks a reference to proposed §262.17(a)(5)(ii), and therefore does not include requirements for tanks and containment buildings with respect to the recording of accumulation time or marking with the words “Hazardous Waste.” CT DEEP believes that language should be added to correct this oversight.
- k.) CT DEEP believes that EPA should consider adding language to proposed §262.17(f) that references the prohibition on dilution of 40 CFR 268.3. Although the language as written is correct, it may leave LQGs with a misimpression regarding the regulatory consequences of mixing hazardous waste with non-hazardous waste.
- l.) CT DEEP supports the proposed §262.17(g) regarding the consolidation of waste from very small quantity generators (CESQGs) at LQG sites under the control of the same person. However, CT DEEP requests that EPA consider whether it might be appropriate to add the words “without a permit or interim status...” to the first paragraph of this section, to clarify that this acceptance of hazardous waste from off-site does not trigger the need to obtain a permit.

Also, regarding the clause at the end of the first paragraph regarding contractors, CT DEEP reiterates its concerns as noted in comment 38.e. above.

Lastly, CT DEEP believes that a number of editing changes should be made to proposed §262.17(g). In particular:

- The last word in proposed §262.17(g)(1)(ii) should be changed from “generator” to “generator(s)” to account for the fact that an LQG may be receiving waste from more than one very small quantity generator (CESQG).
- In proposed §262.17(g)(2), the word “the” just before the first appearance of the term “very small quantity generator” should be changed to “each” for the same reason.
- In proposed §262.17(g)(3), the word “the” just before the first appearance of the term “very small quantity generator” should be changed to “each” for the same reason.

42.) Proposed Rule Language, §262.18, EPA Identification Numbers and Re-Notification for Small Quantity Generators and Large Quantity Generators. CT DEEP has the following editorial comments regarding the language of this section:

- a.) The word “may” in proposed §262.18(b) should be changed to “must.” The word “may” implies either that the requirement to obtain an EPA identification number is

optional, or that the use of EPA form 8700-12 to obtain an EPA ID Number is optional, neither of which is the case.

- b.) The word “thereafter” which appears twice in proposed §262.18(d) should be replaced with “after its initial notification” to make it precisely clear what the triggering event is for re-notification.

43.) Proposed Rule Language, §262 Subpart L, Alternative Standards for Episodic Generation. CT DEEP supports the concept of creating a new stand-alone section within the hazardous waste generator requirements that describes how episodic generators should manage their waste. This is an issue that is not addressed by the current generator regulations, and is a source of confusion and questions from generators that find themselves in this position. However, CT DEEP has the following comments on the proposed language of this new subpart:

- a.) CT DEEP’s greatest concern with the proposed language is that the requirements that apply to an episodic generator is based on the generator category that generator was in prior to the episodic event rather than the category that the generator becomes during the episodic event. Specifically, a very small quantity generator (CESQG) that has an episodic event is subject to proposed §262.232(a), and an SQG that has an episodic event is subject to proposed §262.232(b) – regardless of the amount of waste that is generated during the episodic event.

CT DEEP believes that the requirements that apply to an episodic generator should be based on the generator category that they become during the episodic event. CT DEEP believes this because the requirements of proposed §262.232(a) are significantly less protective than those in proposed §262.232(b). As a result, under the proposed rule language, a very small quantity generator (CESQG) would be subject to less protective requirements even if they generated very large amounts of waste.

CT DEEP believes that this problem could be largely corrected simply by revising proposed §262.232(a) so that it applies to very small quantity generators (CESQGs) episodically operating as an SQG, and revising proposed §262.232(b) so that it applies to either very small quantity generators (CESQGs) or SQGs episodically operating as an LQG. CT DEEP believes that this would ensure an appropriate level of protectiveness while at the same time providing significant relief from the current requirements applicable to episodic generators.

- b.) Proposed §262.232(b)(4) prohibits the use of containment buildings during an episodic generation event. CT DEEP notes that one type of episodic event that can occur is a large remediation project, and that it may be desirable in such a project to manage contaminated soil in a containment building. CT DEEP requests clarification on whether the prohibition on the use of containment buildings in proposed §262.232(b)(4) means that containment buildings may never be used in any circumstances at an episodic generation site, or if this prohibition simply means that a generator wishing to use a containment building must simply comply with full LQG

- requirements. CT DEEP also believes that EPA should consider adding language to the episodic generation regulations clarifying this issue.
- c.) Proposed §262.232(b)(4)(i) appears to contain some superfluous language (namely, “that meet the standards at part 265 subpart I of this chapter, except §§265.176, and 265.178 of this chapter”).
  - d.) Similar apparently superfluous language is also found in proposed §262.232(b)(4)(ii) (namely, “that meet the standards at §265.201 in Subpart J”).
  - e.) Proposed §262.232(b)(4)(iii) states that the episodic generator must “[c]omply with the applicable conditions listed in §262.16.” CT DEEP is not sure what this condition actually requires, since it is not clear which of the conditions in that section would be “applicable” and which would not, and because many of the requirements in that section are already introduced, to one degree or another, elsewhere within §262.232(b). Is there some text or regulatory reference(s) that were accidentally omitted from this section?
  - f.) Proposed §262.232(b)(5) states that the episodic generator must treat the waste generated from the event *or* manifest and ship it off site within 45 days. CT DEEP notes that such a generator could both treat *and* manifest its waste off-site, and that the use of the word “or” may therefore be inappropriate in this section.
- 44.) Proposed Rule Language, §262 Subpart M, Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators. CT DEEP supports the incorporation of the preparedness and prevention and contingency plan requirements that were previously referenced to part 265 into the language of the generator requirements. CT DEEP agrees with EPA that this will make the requirements easier for LQGs to find and comply with. CT DEEP also supports the improvements that EPA has made to these requirements, especially those relating to the new language referencing LEPCs, the requirement that generators have a certified letter documenting their arrangements with local authorities, the updating of the requirements for the maintenance of contact information, and the requirement for an executive summary of the contingency plan. However, CT DEEP has the following comments on the language of the proposed rule:
- a.) With respect to proposed §262.252 (introductory paragraph), CT DEEP has the same concern and comment as noted in comment 40.i. above regarding the new language clarifying where required emergency equipment must be kept.
  - b.) CT DEEP notes that EPA removed the words “as appropriate” from proposed §262.256(a) prior to the words “for the types and quantities of hazardous waste handled at the site.” Did EPA intend to remove these two words? CT DEEP notes that these two words appear in current 40 CFR 265.37, and in the parallel language for SQGs in proposed §262.16(b)(8)(vi)(A). CT DEEP believes that the words “as appropriate” should be put back into this section, since they make the sentence more

readable and understandable, and because they clarify the purpose and intent of the required arrangements.

- c.) CT DEEP notes that the language of proposed §262.256(c) and §262.262(b) are not consistent with each other. More specifically, the former section uses the phrase “local fire departments and other relevant emergency responders (e.g., police and hospitals)” whereas the latter section simply states “local emergency responders”. CT DEEP believes that the former language should be used in both sections, so as to clearly specify the emergency responders to which an LQG must send a copy of their contingency plan and the executive summary of their contingency plan.
  - d.) CT DEEP believes that the word “coordinator” in proposed §262.262(b)(8) should be changed to “coordinator(s),” since an LQG could have more than one emergency coordinator.
  - e.) CT DEEP believes that the word “increases” in proposed §262.263(c) should be changed to “affects.” More specifically, CT DEEP believes that the contingency plan should not be changed only if a change in the generators site *increases* the potential for fires, explosions, or releases, but in any case where such potential is *affected*, since such changes could merit amendments to the information and response procedures that it would be appropriate to have in the contingency plan.
- 45.) Proposed Rule Language, §§264.1 and 265.1, Purpose Scope and Applicability – Hazardous Waste Facility Requirements. CT DEEP supports making conforming changes to these sections, However, CT DEEP notes that the language in proposed §264.1(g)(3) is inconsistent with the language in proposed §265.1(c)(7), even though both of these sections fulfill nearly identical purposes (i.e., to establish an exemption from the requirements applicable to storage facilities for generators that comply with the applicable conditions for exemption). In particular, the specific generator sections that are referenced are different in each of the two sections, and the language in proposed §265.1 has an additional phrase (“except to the extent...”), the purpose of which is not clear.
- 46.) Proposed Rule Language, §264.1030(b)(2), Subpart AA Air Emissions Requirements. CT DEEP supports the conforming change to this section to remove a reference to current §262.34, but notes that there is also a similar reference in current §264.1030(b)(3) that should be changed.
- 47.) Proposed Rule Language, §264.1050(b)(3), Subpart BB Air Emissions Requirements. CT DEEP supports the conforming change to this section to remove a reference to current §262.34, but notes that there is also a similar reference in current §264.1050(b)(2) that should be changed.
- 48.) Proposed Rule Language, §270.1, Purpose and Scope – Hazardous Waste Facility Permitting Requirements. CT DEEP supports the conforming changes made to this section. However, CT DEEP reiterates its concerns as expressed in comments 9, 34, and

35.b. and d. above regarding the limiting effect that the kind of language in proposed §270.1(c)(2)(i) may have on the enforcement options that are available for authorized states such as Connecticut. Also, CT DEEP notes that the language in proposed section §270.1(c)(2)(i) is not consistent with the language in proposed §§264.1(g)(3) and 265.1(c)(7), even though all three of these sections fulfill nearly identical purposes (i.e., to establish an exemption from the requirements applicable to storage facilities for generators that comply with the applicable conditions for exemption). See comment 45 above for more on this topic.

- 49.) General Comment: Challenges with State Implementation. CT DEEP notes that portions of this proposed rule would be more stringent than the current federal generator requirements, and that, as a result, authorized states would have two years to adopt the rule once it becomes final at the federal level. CT DEEP is concerned about the burden that this will place on the limited RCRA program capacity that CT DEEP has to implement the rule. The staff resources available to undertake RCRA policy changes and the authorization process have been declining for many years and are at an all-time low. These staff are currently working on the authorization process for implementing important EPA RCRA rules that the Agency promulgated over the past five or more years. Implementing the proposed rule will be especially burdensome for state staff because of the need to compare and cross-walk existing state regulations against the revisions in the rule and to determine how to align the states' rules so that they reference the proper federal requirements and are at least as stringent as EPA's. In addition, there are public and legislative notifications and other policy-making processes that states must follow that are time-consuming. To provide adequate time for implementation of the proposed rule when it becomes final, CT DEEP recommends that EPA allow states four to six years to apply for authorization. CT DEEP also recommends that EPA allocate adequate supplemental RCRA funds to the states for authorization, just as EPA did for the corrective action rules that were promulgated many years ago.

This concludes CTDEEP's comments on the Proposed Rule. Please contact Ross Bunnell of my staff if you should have any questions on the foregoing. Mr. Bunnell may be reached by phone at (860) 424-3274, or by email at [ross.bunnell@et.gov](mailto:ross.bunnell@et.gov).

Sincerely,



Robert C. Isner, Director  
Waste Engineering & Enforcement Division

RCI:rqb  
cc: Terri Goldberg, NEWMOA