

## **Hazardous Waste Rulemaking Stakeholder Meeting – June 29, 2018**

ADEQ held a joint webinar/ in-person meeting for interested stakeholders on June 29, 2018 to discuss our proposed rulemaking for hazardous waste. The following questions were presented to ADEQ during the meeting. Our responses are provided after each question. General comments made during the meeting are listed at the very end.

### **Questions:**

**Question Asked:** Just to clarify, waste labels on hazardous waste drums in SAAs need to have the waste codes on them? If yes, does this only apply to LQGs?

**ADEQ Response:** This is correct, but both SQGs and LQGs will need to do this.

**Question Asked:** What CFR code is the quick reference guide of the rule listed in?

**ADEQ Response:** 40 CFR section 262.262 (b)

**Question Asked:** Isn't the GIR enforced now by EPA due to the Hazardous and Solid Waste Amendment?

**ADEQ Response:** Arizona is authorized by EPA for our hazardous waste program, so facilities must comply with Arizona statutes and rules.

**Question Asked:** Will the general public be able to see the details of our manifests?

**ADEQ Response:** The e-manifest rule allows public access 90 days after the date of receipt at the receiving facility. In addition, certain data from manifests that may involve the shipment of Chemicals of Interest (COI) under chemical security rules, issued by the Department of Homeland Security (DHS), will be redacted from manifests before they are made available to the general public.

**Question Asked:** If there are several transporters between generator and TSDF and one of those transporters is not able to use e-manifest, but all others are, how will that work?

**ADEQ Response:** US DOT requirements have not changed due to the use of e-manifest. Transporters are still required to keep a paper copy in the vehicle. So, if a transporter is not using e-manifest, they will be able to sign the paper copy. Transporters need to check with receiving facilities to see what they will or will not accept.

**Question Asked:** Does the TSDF still have to mail back the hybrid version to the generator?

**ADEQ Response:** No. Under the hybrid manifest approach, generators will be given a paper copy that will be signed by hand by the generator and the initial transporter. These generators will retain this signed paper copy as their initial manifest copy, just as they have done under the existing manifest regulations for paper manifests. The transporter and subsequent waste handlers will conduct the remaining manifest completion and tracking requirements electronically in the system.

Generators that do not establish accounts for viewing their manifests should make arrangements with their receiving facilities to supply the generators with paper copies of completed manifests. The e-Manifest system will only supply electronic copies of completed manifests to generators.

Receiving facilities are responsible for determining that their generator customers are registered with e-Manifest and using the system for monitoring their manifest records. Receiving facilities should continue to mail paper copies to their generator customers, until they have confirmed that the generator is registered and using e-Manifest for recordkeeping.

**Question Asked:** Can the e-manifest be used as the DOT shipping paper? I think nearly all of us use the paper manifests as the DOT shipping papers as applicable to DOT requirements.

**ADEQ Response:** Copies of manifests in e-Manifest will satisfy the US DOT's hazardous materials regulations on retention of shipping paper records. The US DOT rules allow shippers (generators) to retain copies of shipping papers such as the manifest electronically, although they may be asked to produce a hard copy of the electronic document's on request by the inspector.

**Question Asked:** Can the generator sign (pre-sign) a manifest without being present during the actual shipment?

**ADEQ Response:** Yes, they may. They do need to understand that they are signing the generator certification which is as follows:

In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent."

**Question Asked:** I heard EPA indicate yesterday that payment is no longer via Pay.gov; is payment now thru e-Manifest portal directly?

**ADEQ Response:** The EPA has simplified the invoice payment process to allow you to make your payments to Pay.Gov directly through e-Manifest. Thus, a separate account with Pay.Gov is not required. The invoicing and electronic payment process provided through e-Manifest is the exclusive means supported for e-Manifest fee billing and payments.

**Question Asked:** The generators do not need to send the completed manifest to the state once it reaches its final destination?

**ADEQ Response:** That is correct.

**Question Asked:** To be clear, if a TSDF is using e-manifest option, the generator AND transporter are required to sign up and use e-manifest as well? Or does the e-manifest requirement only apply to the transporter and TSDF?

**ADEQ Response:** A generator without electronic signature capability can take advantage of the hybrid process, which allows the generator to obtain, sign by hand, and retain a paper printout of an electronic manifest that all other handlers sign and complete electronically.

**Question Asked:** To clarify, if a TSDF decides to go electronic, then all of their generators and transporters must be signed up for e-manifest, except for the hybrid option, right?

**ADEQ Response:** That is correct.

**Question Asked:** If a shipment begins on a 5-page manifest, and the TSDF converts it to e-manifest through data file upload, the requirement to mail a terminated copy of the paper manifest should be void given the generator will have immediate access online.

**ADEQ Response:** Generators that do not establish accounts for viewing their manifests should make arrangements with their receiving facilities to supply the generators with paper copies of completed manifests. The e-Manifest system will only supply electronic copies of completed manifests to generators.

Receiving facilities are responsible for determining that their generator customers are registered with e-Manifest and using the system for monitoring their manifest records. Receiving facilities should continue to mail paper copies to their generator customers, until they have confirmed that the generator is registered and using e-Manifest for recordkeeping.

**Question Asked:** What will ADEQ adopt as the 4th legitimacy requirement?

**ADEQ Response:** ADEQ will not be adopting the rules related to the Definition of Solid Waste (DSW) during this rulemaking. We anticipate discussing the specifics of our adoption of DSW rules with stakeholders in early 2019.

**Question Asked:** Guidance in regard to how we will enforce between now and the adoption?

**ADEQ Response:** Inspectors have been advised to use enforcement discretion in regards to the federal rules. ADEQ does not enforce on anything more stringent than the rules currently in place in Arizona. ADEQ's goal is to work with our stakeholders and customers to understand how these rules will impact them.

**Question Asked:** Is the 50 foot waiver something ADEQ would be willing to allow before adoption?

**ADEQ Response:** ADEQ is open to comments and feedback from our stakeholders. The Generator Improvement Rule allows generators to seek relief from this rule if they have the support of local responders.

**Question Asked:** What DOT training is expected for signers of manifests?

**ADEQ Response:** US DOT training requirements are outlined in 49CFR 172.704.

**Question Asked:** How can you do e-manifesting and comply with DOT? Are the hybrid or paper options the only real solutions?

**ADEQ Response:** The EPA is coordinating with US DOT during the development of e-Manifest. The system will generally allow a user to produce a manifest that satisfies the US DOT HMR requirement for

a shipping paper. One key point is that US DOT currently requires that a hard copy shipping paper be placed in the cab of the transport vehicle during transportation. Therefore, handlers using e-Manifest will still need to comply with that requirement (e.g., print the manifest from the e-Manifest system).

Proper use of e-Manifest will satisfy the EPA RCRA recordkeeping requirements for hazardous waste generators, transporters, and receiving facilities. US DOT HMR requires companies to retain a copy of the shipping paper (manifest), or an electronic image. US DOT allows companies to retain shipping papers electronically, as long as a hard copy is provided to an authorized representative upon request. The retention periods supported by e-Manifest will meet or exceed US DOT's three-year record retention requirements for hazardous waste shipping papers.

**Question Asked:** When can a receiving facility decide to switch over?

**ADEQ Response:** The EPA recently announced that it would grant receiving facilities extra time to submit paper manifests in the initial months after system launch to further support industry implementation. Facilities that receive manifested waste between June 30, 2018 and September 1, 2018 will now have until September 30, 2018 to send those paper manifests to the EPA.

**Question Asked:** As generators we're stuck. We don't typically tell transporters where to take waste. How will this affect us?

**ADEQ Response:** As the generators of the waste you are still responsible for your hazardous waste from cradle to grave. If you feel that using e-manifest has put you in a position that you cannot control your waste, please contact our office at 602-771-4123.

**Additional comments received during the webinar:**

We strongly support the DSW specifically because of the HSM. Large financial benefits.

I would strongly encourage ADEQ to adopt the Definition of Solid Waste rule; specifically, the provisions pertaining to the management of hazardous secondary materials.

I just don't see the benefit of using an e-manifest when we are all still required to print out copies of the manifest for DOT hazmat shipping.