

Notes

NEWMOA Hazardous Waste Conference Call

April 14, 2020

Topic: Hazardous Waste Program Activities During the COVID-19 Pandemic

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Participants: CT DEEP (14 people); ME DEP (2 people); Mass DEP (20 people); NH DES (14 people); NJ DEP (19 people); NYS DEC (33 people); RI DEM (4 person); VT DEC (4 people); EPA Region 1 (10 people); EPA Region 2 (7 people); EPA Headquarters (5 people); NEWMOA (1 person)

Call leader: NEWMOA

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EPA Update

EPA has issued an enforcement COVID-19 policy that is available at:

<https://www.epa.gov/enforcement/enforcement-policy-guidance-publications#covid-19> and a Office of Land and Emergency Management (OLEM) statement - https://www.epa.gov/sites/production/files/2020-04/documents/attachment_-_olem_posture_covid-19_final_3-19-20.pdf. The

The policy outlines EPA's position on enforcement that if a facility makes every effort to comply with routine monitoring and reporting and if they can demonstrate that the non-compliance was related to responses to the COVID-19 pandemic, EPA will not pursue enforcement. EPA acknowledges that states will follow their own enforcement policies.

For the RCRA program, there is a consideration of potential disruptions at generator sites. They should transfer waste within the reporting period and properly label and store waste and thereby

maintain compliance. If they are in compliance with these but need to store for more than the allowed time, they will be treated as a generator and not a treatment, storage, and disposal facility (TSDF).

How will EPA manage situations where states do not meet grant commitments due to stay at home orders? Will this be a consideration during the State Review Framework (SRF)? EPA is not clear on this.

EPA's policy does not make a distinction between essential and non-essential facilities.

EPA has suspended compliance evaluation inspections at hazardous waste generators due to the COVID-19 crisis.

States Updates

Connecticut Department of Energy and Environmental Protection (CT DEEP): There was a large quantity generator (LQG) that contacted them about their concern that they might not be able to comply with the 90-day storage time limit and the weekly container storage area inspection requirements under RCRA. They have offered suggestions to the generator on compliance. With respect to the 90-day accumulation time limit, CT DEEP said the only option at this time is to request a 30-day extension to the 90-day time limit as provided for in our regulations. However, CT DEEP also noted that they were working with EPA on this issue and more alternatives may become available (alluding to EPA's Enforcement Discretion Policy, which had not been issued at the time of DEEP's response to the company). With respect to inspections, CT DEEP said the best thing to do would be to ship the waste off-site since then there would be no containers to inspect; however, short of that, there is no provision in the regulations for this situation and if the company comes up against this problem, they should write us proposing an alternative approach. The company got back to DEEP and decided they could handle the situation and it did not become an issue. Generators may also be having difficulty meeting the annual training requirement (e.g., if an employee is due for an annual refresher while the company is closed down due to COVID-19).

CT rules require state permits for 10-transfer facilities to store waste, and a 10-day transfer facility in CT that was shipping waste to the Stablex facility in Canada was concerned about being able to get it there due to the closure of the US/Canada border. DEEP sent out guidance indicating they had three options: (1) ship the waste back to the generator; (2) ship the waste to a fully-permitted facility; or, (3) obtain a RCRA emergency permit to store the waste for greater than 10 days. However, it was later determined that the border is not shut down to industry and commerce, just to citizen traffic. Although the transfer facility still had some logistical problems in getting the waste to be Stablex (i.e., they had to switch transporters at the last minute), there were able to get the waste off-site only one day beyond the 10-day limit.

Most TSDF operations are proceeding normally. They plan to look into used oil facilities and any other issues that TSDFs may be having. NY has reported capacity issues at used oil waste facilities.

CT is not inspecting solid waste and hazardous waste facilities and generators. They are working on drive-by inspections in response to complaints. They are also inspecting landfills and closed sites where they do not encounter other people. They are not doing any LQG inspections. For personal protective equipment (PPE), they use hand sanitizers and appropriate gloves. They have not been told to wear masks. The HW and emergency response staffs do not have N95 masks. They call ahead to the facilities they visit and honor social distancing requirements when there. For vehicle maintenance and fuel stations, they do not enter buildings or garages.

They have been fielding a lot of manifest questions, especially about transporting across state lines. On March 27, they adopted NY's policy regarding generator signature upon pick up. CT follows a similar policy. They are also exercising discretion. They are allowing the parties to not exchange paper upon pick-up, if all parties are following the regulations and reporting to RCRA Info. They would like to get feedback on the paper policy.

For administrative enforcement, they are thinking through issues, including enforcement discretion. It's hard to pursue the ongoing cases, since the courts are shut down. On pending consent orders, DEEP is staying the course. They are working on sending two such consent orders. Also, a Notice of Violation (NOV). They will see how the process goes. The NOV is based on an inspection that was done prior to COVID-19.

Maine Department of Environmental Protection: They have not adopted EPA's policy. They are addressing enforcement on a case-by-case basis. They have suspended RCRA inspections. They are continuing to follow-through on pre-COVID-19 enforcement cases. They are working on RCRA permits and rulemakings. They are updating the e-manifest database with data on SQGs.

Under their rules, DEP can grant up to three consecutive extensions for 30 days each to the HW storage time limits. This was approved by EPA during DEP's authorization.

New Hampshire Department of Environmental Services: Staff is working from home. They are not conducting inspections. They will lose about seven weeks of field time. They are working with EPA to adjust their obligation numbers. They are following up on inspections that were conducted pre-COVID-19 stay at home orders. They are trying to minimize sending letters. They are doing compliance through emails as much as possible. They are writing up the inspections they have already completed. The Bureau is using Zoom, Go to Meeting, and WebEx to communicate among the staff. They are sending some emails to consultants and generators. Container inspections still much be done every seven days. Companies can request an extension on their 90-day storage requirements for 30 days. They have not yet received any requests for storage time extensions. They have extended the HW coordinator training deadlines. Under the Governor's emergency order the HW coordinator training certification is extended by six months. They are granting another 90 days.

All NH facilities have to comply with the regulations. DES will take COVID-19 circumstances into consideration in evaluating non-compliance. They are finishing writing up their inspections and sharing through Box. They can remotely elect to sign document and share through Drop Box.

Each document is a separate file and they are keeping hard copies for the files. For letters of deficiency, they send a draft to DES management to decide whether to send it. Settlements started before COVID-19 are continuing. They are documenting cases as much as they can and then getting approval from the commissioner to pursue.

Massachusetts Department of Environmental Protection: On April 18, they published guidance on HW management that is retroactive to March 10 (will share). This applies to tanks, containers, SQGs, and LQGs. They instructed the generators to contact MassDEP if they can't do required inspections and provided a phone number to call. They clarified the requirements for signing manifests and reminded them about their agreements with transporters about signing manifests without company personnel present. The agreements are flexible. Their SQG/LQG compliance time limits reflect EPA guidance. They are in touch with eight HW facilities in the State. They are not finding any emergent situations and things appear to be ok. They are seeing a steep decline in used oil generation and related activity

New Jersey Department of Environmental Protection: Their situation is similar to CT DEEP's. They are under a stay at home order and staff is working from home. They are not doing generator inspections. They are not doing full TSDf and HW recycling facility inspections. They have started to conduct drive by inspections to see what they can from the street. They are starting to do some limited inspections of temporary transfer facilities for regulated medical waste, including COVID-19 material. Under these limited inspections they are not going into the offices or reviewing paperwork. DEP is using enforcement discretion and looking at situations on a case-by-case basis.

DEP has been doing a lot of outreach on regulated medical waste (RMW) facilities. They are communicating with them each week. Their RMW disposal is not a capacity. They can handle more waste. DEP is communicating with the hospitals about their storage capacity. They are assessing how much waste they are handling and finding it's about 9-11 pounds/person/day of RMW. Adding in the personal protective equipment (PPE) waste, it's about 30-40 pounds/patient/day. They are asking hospitals about storage capacity and having additional trailers onsite to handle the waste. Some urban sites have limited areas for additional trailers. They are using enforcement discretion for COVID-19 testing and decontamination sites. They want to make sure that all sites are registered. The hospitals must send an email to identify the storage locations and credentials to DEP. There are two permitted RMW collection sites in NJ. DEP is also using enforcement discretion at 10-day HW storage facilities. They have issued temporary approvals for transporters of RMW. They have sent compliance alerts to transporters, hospitals, health care facilities, and counties cover RMW and COVID-19 topics.

New York State Department of Environmental Conservation: Their situation is similar to the other states. Staff are working from home and one or two people go into the office periodically. They have done some inspections early on, but they are not doing many at the moment. They are working on the enforcement pipeline, issuing/moving NOV's and consent orders from inspections that took place prior to the COVID-19 pandemic. They are also using enforcement discretion and addressing issues as they come up.

They have worked on a manifest process for transporters in terms of signatures on the documents. Their process allows the transporter to sign for the generator. They have received requests for 30-day storage extensions, and they have granted those. They are on working on other possible areas for enforcement discretion, including the requirements for training and weekly inspections. They are trying to put something in place.

Certain businesses have been declared to be essential and continue to operate. This include Superfund and other cleanup sites. They have not heard about any problems or complaints at these sites. They are working on whether facilities with corrective action can continue or should take a break. They are still considering where these are essential.

Rhode Island Department of Environmental Management: On March 17, the governor issued a stay at home order and now 80 percent of the DEM staff are working remotely. DEM has suspended routine indoor inspections of HW facilities due to COVID-19 crisis. They are responding to complaints. They have drafted enforcement letters that are pending management reviews. They have contacted facilities to provide verbal instructions on returning to compliance. On April 2, DEM issued a press release stating that the Agency would continue its enforcement activities. They would provide relief on a case-by-case basis. They have not had a downturn in activity. They are working on adopting the Generator Improvement Rule, Aerosol Can Rule, and Airbag Rule. They are conducting a survey of SQGs in RCRAInfo to check on these facilities to make sure they are still in business. They use the results to identify facilities that have changed their names so they can conduct follow-up inspections. Inspectors are also taking online training classes.

DEM is finding that the oil prices are going down and there are disruptions in the supply chain, which is affecting the use oil facilities. They are concerned about the economic viability of some of the operations, particularly related to financial assurance. They are concerned about the facilities maintaining their storage times, daily inspections, and signing manifests. They are instructing people to EPA's guidance on manifests.

Vermont Department of Environmental Conservation: Like other states, DEC has a stay at home order. They are not conducting inspections. They are responding to high priority complaints. The spill response staff is considered essential. They are responding to questions as other states. They can grant extensions to the 90 and 180 storage time limits under their rules. They have posted agency-wide information on their enforcement discretion policies on the Agency of Natural Resources webpage. The reason for any use of discretion has been be linked to COVID-19 pandemic. The information includes discretion statements that are program specific and indicate how to comply during this period. They are also posting answers to questions that come up. In the interim, the staff that normally do inspections are taking online training, working on their regulatory authorization packages, and working on permits. They are renewing their Safety-Kleen permit. They are working on a permit for the EnPro facilities in Williston and coordinating with the solid waste program on storage requirements and allowing storage of COVID-19 contaminated waste.

Information shared by email after the call:

Covid-19/HW guidance for MA:

<https://www.mass.gov/doc/guidance-on-managing-hazardous-waste-during-the-covid-19-emergency/download>

EPA Guidance on field work as it could apply to RCRA Corrective Action sites (PDF document attached).