

NEWMOA Hazardous Waste Conference Call

April 26, 2016

Topic: “Emergency Permits”

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NEWMOA hazardous waste conference call

New Hampshire lead/New York note-taker

Participants: CT DEEP (2 people); Mass DEP (4 people); NH DES (5 people); NJ DEP (4 people); NYS DEC (9 people); RI DEM (1 person); VT DEC (4 person); EPA Region 1 (2 people); EPA Region 2 (1 person); NEWMOA (1 person)

Background

40 CFR 270.61 Emergency permits:

(a) Notwithstanding any other provision of this part or part 124, in the event the Director finds an imminent and substantial endangerment to human health or the environment the Director may issue a temporary emergency permit: (1) To a non-permitted facility to allow treatment, storage, or disposal of hazardous waste or (2) to a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit.

Listed as a State “Special Permit” in New Hampshire

Env-HW 304.05 Permitting Hazardous Waste Facilities/Emergency Permits

NHDES issues Emergency Permits to treat hazardous waste in response to a specific, unexpected incident that NHDES determines may cause an imminent and substantial hazard to human health or the environment. May be issued for a non-permitted facility to treat, store or dispose of hazardous waste; or for a permitted facility to treat, store or dispose of hazardous waste not covered by an existing permit. Most permits are issued to hazardous waste generators to allow treatment of a hazardous waste that is too dangerous to transport in its current condition.

Emergency Permit Not Required per Environment-Hazardous Waste 302.02 (k) for the duration of the emergency response only, a person shall not be required to obtain a permit for treatment or containment activities taken during immediate response to any of the following situations:

- (1) An unplanned discharge of a hazardous waste;
- (2) An imminent and substantial threat of a discharge of hazardous waste; or
- (3) A discharge of a material which, when discharged, becomes a hazardous waste.

Examples of Where an Emergency Permit Has Been Issued to a Facility to Stabilize the Following Chemicals:

1. Tetrahydrofuran - Tetrahydrofuran is a peroxide former and must be stabilized with Ferrous Ammonium Sulfate/Hydroquinone before the material can be transported to an off-site permitted hazardous waste facility for final disposal.
2. Radcure Polyester Acrylate -Radcure Polyester Acrylate is a Monomer Compound and must be stabilized with MEQH/Methanol Solution before the material can be transported to an off-site permitted hazardous waste facility for final disposal.

Questions for the Participants

1. How many Emergency Permits does your state typically issue per year?
2. Does your State Charge a Fee for an Emergency Permit?
3. For what type of situations does your State require an Emergency Permit? Do you require Emergency Permits for stabilization with water? Is an Emergency Permit required for treatment of munitions?
4. How does your state define “imminent and substantial endangerment to human health or the environment”?
5. Does your State require that the permittee publish a public notice of the issuance of the emergency permit in a daily or weekly newspaper? (40 CFR 270.61(b)(5))
6. Is a representative of your Department on-site during the stabilization process?
7. Any enforcement related to the Emergency Permit? (e.g. treatment without an Emergency Permit)
8. Does your program provide verbal permits followed-up by written permits in cases where there is not sufficient time for doing a written permit only?

New Hampshire

1. *How many Emergency Permits does your state typically issue per year?* 2-3 per year.
2. *Does your state charge a fee for an Emergency Permit?* No.
3. *For what type of situations does your State require an Emergency Permit? Do you require Emergency Permits for stabilization with water? Is an Emergency Permit required for treatment of munitions?* Treatment of hazardous waste too dangerous; discarded explosive – emergency permit is not required. Last Friday someone brought some ethyl ether at the Nashua household hazardous waste (HHW) drop off in an old rusted can. The HHW consultant called the Nashua Fire Department, who brought in the bomb squad to blow up the can. This was considered an emergency explosive situation. Interested in how other states would handle this and whether they have seen similar situations.

4. *How does your state define “imminent and substantial hazard to human health or the environment?”* Rules are not specific; conditions present an imminent hazard for the public.
5. *Does your State require that the permittee publish a public notice of the issuance of the emergency permit in a daily or weekly newspaper?* No, posted in a public place like bulletin boards.
6. *Is a representative of your Department on-site during the stabilization process?* No; may choose to witness to better understand what is happening.
7. *Any enforcement related to the Emergency Permit?* Not to date. Many Permits have been issued to universities for strange chemicals stored in laboratories.
8. *Does your program provide verbal permits followed-up by written permits in cases where there is not sufficient time for doing a written permit only?* Yes, at least once.

Connecticut

1. *How many Emergency Permits does your state typically issue per year?* 5 in 20 years.
2. *Does your state charge a fee for an Emergency Permit?* \$2500
3. *For what type of situations does your State require an Emergency Permit? Do you require Emergency Permits for stabilization with water? Is an Emergency Permit required for treatment of munitions?* Issues include facility bring to facility and characterize; 2 explosives manufacturers who were not able to send off-site in required time period; TSDF needed additional time to characterize waste; 10-day storage transfer facility needing additional time to characterize (CT permits 10-day storage facilities). None involved treatment of a reactive substance. Don't for stabilization with water; no munitions emergencies.
4. *How does your state define “imminent and substantial hazard to human health or the environment?”* 270.61 – Look at case by case; absent an emergency permit, not possible to properly manage within the hazardous waste (HW) rules.
5. *Does your State require that the permittee publish a public notice of the issuance of the emergency permit in a daily or weekly newspaper?* Yes, just as for a regular TSDF permit.
6. *Is a representative of your Department on-site during the stabilization process?* Not applicable to date; but old ethyl ether, picric acid dealt with as part of spill response type of action, but they typically have not looked at as “RCRA activities,” exercise emergency authorities, experts.
7. *Any enforcement related to the Emergency Permit?* None known, but storage time was prescribed, extended in above instance(s).
8. *Does your program provide verbal permits followed-up by written permits in cases where there is not sufficient time for doing a written permit only?* None known.

NH – has CT seen any emergency responses due to universities with strange/unstable lab chemicals?

Response - not that is known, they probably have contractor response and lab packs. CT permits transporters; also rely on spill program and spill contractors.

Massachusetts

1. *How many Emergency Permits does your state typically issue per year?* About 10-12 (most so far 16; so far this year, 3 plus 1 just came in).
2. *Does your state charge a fee for an Emergency Permit?* No.

3. *For what type of situations does your State require an Emergency Permit? Do you require Emergency Permits for stabilization with water? Is an Emergency Permit required for treatment of munitions?* Leave up to generator and contractor to notify if they meet the emergency permit requirements. Munitions usually goes to chief emergency planner, so they do not usually know until after.
4. *How does your state define “imminent and substantial hazard to human health or the environment?”* They do not have any; gray areas around that question.
5. *Does your State require that the permittee publish a public notice of the issuance of the emergency permit in a daily or weekly newspaper?* Mass DEP prepares the notice, must be published before the treatment is done (at least do the transaction if a weekly paper). Tufts Medical Center could not publish in time in weekly paper, so they had to go to a larger paper in Boston.
6. *Is a representative of your Department on-site during the stabilization process?* Not required, but may go to observe, see how doing it, or if following their permit application.
7. *Any enforcement related to the Emergency Permit?* Not so far.
8. *Does your program provide verbal permits followed-up by written permits in cases where there is not sufficient time for doing a written permit only?* Yes, at least one instance.

A lot of treatment comes from labs.

New Jersey

1. *How many Emergency Permits does your state typically issue per year?* None; emergency response group will go out on any call; also spill fund.
2. *Does your state charge a fee for an Emergency Permit?* No.
3. *For what type of situations does your State require an Emergency Permit? Do you require Emergency Permits for stabilization with water? Is an Emergency Permit required for treatment of munitions?* Not so far – the experts are prepared.
4. *How does your state define “imminent and substantial hazard to human health or the environment?”* They have experts who can deal with it quickly.
5. *Does your State require that the permittee publish a public notice of the issuance of the emergency permit in a daily or weekly newspaper?* Not applicable so far.
6. *Is a representative of your Department on-site during the stabilization process?* Not applicable so far.
7. *Any enforcement related to the Emergency Permit?* Not regarding permit, but if they spilled or discharged, they will pay a percentage, goes to spill fund.
8. *Does your program provide verbal permits followed-up by written permits in cases where there is not sufficient time for doing a written permit only?* Not to date.

Routine – labs can call their own contractor and address the situation. Emergency removals that are large could be referred to EPA Region 2.

New York

1. *How many Emergency Permits does your state typically issue per year?* None. (DEC’s counterpart to EPA’s 270.61 Emergency Permits Provision is 621.12.)
2. *Does your state charge a fee for an Emergency Permit?* No3. *For what type of situations does your State require an Emergency Permit? Do you require Emergency Permits for*

stabilization with water? Is an Emergency Permit required for treatment of munitions? When treatment is required and neither the emergency response exemption nor the treatment-in-containers-and-tanks exemption apply. For water stabilization, DEC would require use of their 621.12 counterpart to an Emergency Permit unless the emergency response exemption or the treatment-in-containers-and-tanks exemption applied. For munitions, a Permit would be required only if it is not an immediate response treatment: their immediate response exemption – same as EPA’s – does not drop the need for the treatment to take place only during an immediate response, but, if it is in fact an immediate response, then an immediate threat from munitions qualifies for the permitting exemption. (This guards against an “explosive or munitions emergency response specialist” declaring that there is an on-going “immediate threat to human health, public safety, property, or the environment” and this “immediate threat” lasts for months. DEC wants a say in whether the immediate response exemption continues to apply to that continuing “immediate threat”. (Quotes are from 270.1(C)(3) and DEC’s 373-1.1(d)(1)(xiii))

4. *How does your state define “imminent and substantial hazard to human health or the environment?”* It seems that quote is from NH’s “Env-Hw 304.05 Permitting Hazardous Waste Facilities/Emergency Permits” handout, and it is part of the following sentence “NHDES issues Emergency Permits to treat hazardous waste in response to a specific, unexpected incident that NHDES determines may cause an imminent and substantial hazard to human health or the environment.” The handout also gives a broad example: “Most permits are issued to hazardous waste generators to allow treatment of a hazardous waste that is too dangerous to transport in its current condition” and that seems reasonable since transporting the waste without treatment certainly “may cause an imminent and substantial hazard to human health or the environment.” DEC’s regulations do not use the words “may cause an imminent and substantial hazard to human health or the environment”, although DEC does use, in their “immediate response” permitting exemption, the words: “(d) Exemptions. The owners or operators of the following facilities or portions of facilities are exempt from this Part only as provided in this subdivision...Facilities and operations that conduct the activities listed below...(a) Treatment or containment activities during immediate response to any of the following situations: (1) a discharge of a hazardous waste; (2) an imminent and substantial threat of a discharge of hazardous waste...” so, in reply to NH’s question 4, DEC does not define “may cause an imminent and substantial hazard to human health or the environment” since that language does not appear in their regulations.

5. *Does your State require that the permittee publish a public notice of the issuance of the emergency permit in a daily or weekly newspaper?* (40 CFR 270.61(b)(5)) No, DEC’s counterpart to EPA’s 270.61 Emergency Permit provision is 621.12, and no public notice is listed there as a requirement.

6. *Is a representative of your Department on-site during the stabilization process?* Not as a rule, although an inspector might decide to observe the stabilization.

7. *Any enforcement related to the Emergency Permit?* There is one case involving extended storage of police-confiscated fireworks – hence the immediate response permitting exemption was not available – in which issuance of DEC’s counterpart to a 270.61 Emergency Permit is recognized as the likely outcome, but that case has not yet run its course and so no “enforcement” has taken place so far.

8. *Does your program provide verbal permits followed-up by written permits in cases where there is not sufficient time for doing a written permit only?* No.

Rhode Island

1. *How many Emergency Permits does your state typically issue per year?* About 20 to date or about 2-3 per year.
2. *Does your state charge a fee for an Emergency Permit?* No.
3. *For what type of situations does your State require an Emergency Permit? Do you require Emergency Permits for stabilization with water? Is an Emergency Permit required for treatment of munitions?* Any stabilization prior to transportation, such as shock-sensitive. Permit required for stabilization with water. Munitions overseen by the State Fire Marshall, so DEM is not part of that.
4. *How does your state define “imminent and substantial hazard to human health or the environment?”* No clear definition – case by case.
5. *Does your State require that the permittee publish a public notice of the issuance of the emergency permit in a daily or weekly newspaper?* Prior to treatment.
6. *Is a representative of your Department on-site during the stabilization process?* Not required, but have a choice.
7. *Any enforcement related to the Emergency Permit?* No.
8. *Does your program provide verbal permits followed-up by written permits in cases where there is not sufficient time for doing a written permit only?* None.

Vermont

1. *How many Emergency Permits does your state typically issue per year?* 2-3 on average per year (most 6).
2. *Does your state charge a fee for an Emergency Permit?* No.
3. *For what type of situations does your State require an Emergency Permit? Do you require Emergency Permits for stabilization with water? Is an Emergency Permit required for treatment of munitions?* Usually when haulers or generators have identified that they have a potentially unstable compound. Required for stabilization with water. Not for munitions – state police bomb robots.
4. *How does your state define “imminent and substantial hazard to human health or the environment?”* No separate definition. If contractors or facilities identify as unsafe to move, they do not question.
5. *Does your State require that the permittee publish a public notice of the issuance of the emergency permit in a daily or weekly newspaper?* Prior to treatment; but same weekly issue – get it out before the event. Most are able to be secured, arrange for contractor within 2-3 weeks.
6. *Is a representative of your Department on-site during the stabilization process?* No, their people do not have the training to be safe, and the instances are rare. Local emergency response like fire department already there to observe
7. *Any enforcement related to the Emergency Permit?* Not to date.
8. *Does your program provide verbal permits followed-up by written permits in cases where there is not sufficient time for doing a written permit only?* Allow, but has not come up.

Follow-up Questions

How long before ether becomes unstable? Time/age, conditions, contaminants can affect. Same with tetrahydrofuran (THF).

What do the hospitals use it for? Biotechnology applications; solvent properties.

Any coordination with state bomb squad? In CT, immediate actions are exempt. In MA, rely on contractors.

Question from NH about Supposed Reuse of Paint Thinner

From a recent email:

Recently New Hampshire completed an inspection of a site that takes used thinner and applies it to their concrete floor to soak and remove built-up paint. This business primary performs welding of large steel components. As part of their business they use heavy duty paints to coat surfaces. Due to poor ventilation and the makeup of the paints the paint particles amass on the floor. Drop cloths and poly sheeting are not floor covering options as the painters feet will stick to the temporary floor. Thinners containing F-listed (F003, F005) solvents are used to clean out paint guns (reused several times). At some point the business decides to pour the used thinner into a container to be used to remove paint off the floor. Every 6-8 months the business applies the used thinner in an 8'x8' area on the concrete floor and covers the area with poly sheeting. This is performed three times then the paint is scraped up. During the inspection DES observed that the floor was not clean and there were areas where multiple years of accumulated paint existed creating an uneven floor. The business owner stated that he would not "waste good thinner on that" when asked if he would do the same process with virgin thinner. DES is evaluating if the use of the used thinner constitutes continued use or if the continued use is not legitimate. At NH DES there has been a lot of discussion about how to interpret this use of used thinner and if it is a violation, where DES should site it.

Responses from the participants:

- Worker safety issue? OSHA? Air? Means of disposing of waste solvent?
- Facility has never shipped HW. The owner is probably motivated by cost. It is not really effective. Scrapings are an F waste – thrown in trash, violation that they will be cited for.
- Citation 260.4 legitimacy criteria TARS; the other issue is use constituting disposal (UCD) and the use/reuse exclusion is not available for UCD; legitimacy criteria apply to all forms of recycling.
- Even if DES has not picked up the legitimacy factors; "continued use" meaning, substitute for commercial paint stripper, has to fit into one of the three provisions. Not functioning as an effective substitute. Not exempt because not effective. Removed paint still F-listed; safety/OSHA issue from fumes and vapors.
- Recycling has to be "legitimate," EPA cited in historical memos since at least 1991 – cannot be less stringent.
- Hard to pass the straight face test, though DES is trying to give the generator the benefit of the doubt.