

NEWMOA Hazardous Waste Conference Call February 11, 2014

Topic: Experience of States that Have Exercised LQG Flexibility in their EPA RCRA Grants

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Participants: CT DEEP (7 people); ME DEP (3 people); Mass DEP (3 people); NH DES (6 people); NJ DEP (1 person); NYS DEC (3 people); RI DEM (1 person); VT DEC (2 people); EPA Region 1 (4 people); EPA Region 2 (1 person); NEWMOA (1 person)

Connecticut

CT DEEP received grant flexibility for federal fiscal year (FFY) 2013 inspections of hazardous waste (HW) generators. They chose to do 10 percent of large quantity generators (LQGs), which was equal to about 29 facilities (2011 Biennial Report System [BRS] LQGs = 288 facilities; so 10 percent was 29 facilities) at which they needed to do full Compliance Evaluation Inspections (CEIs).

Prior to conducting the inspections, they examined the BRS LQGs carefully to make sure that the facilities will actually be LQGs when they get there and the inspections are CEIs. They do not think agencies get credit for BRS LQGs that are not actually LQGs when the inspector arrives. They conducted a few extra LQG CEI inspections just to make sure they met their grant objectives.

In addition to the 29 LQG CEIs, they used the flexibility allowed by EPA under the agreement in their grant proposal to do 80 other inspections chosen from the following types:

- Manifest initiative (MI) screening to find other facilities to inspect: those that have not notified as LQGs but are shipping LQG amounts of waste; determine if they are non-notifiers or doing a one-time shipment of large amounts of waste

- Other inspections: SQG/CEG facilities with a focus on salvage yards, transporters, Universal Waste handlers, lamp and electronics recyclers, and HW collection sites

Results for FFY 2013

DEEP staff conducted 34 CEIs at LQGs. Only one of these sites required a formal enforcement action. Pounds of waste mis-managed at these sites (averaged over three years): 32,000+.

Flexibility inspections: 23 MI initiative sites inspections (mostly CEIs) – 5 of these sites required formal enforcement action. Pounds of waste mis-managed at these sites (averaged over three years): ~122,000+.

DEEP has prepared a one-page summary report on their results that they will share with the group. The Agency plans to continue conducting the MI inspections for a few more years.

Types of violations found at MI inspections: storage for long periods of time (>90 days and up to a year); unlabeled waste; and unaware that they are operating as LQG and do not know that they are regulated, so they have a lot of violations like no training and no contingency plan.

Question: How was the process of applying for the alternative?

Response: CT found that it was not difficult because they knew from previous initiatives that the facilities they were proposing to visit would yield results.

Question: Did they have many LQGs that are LQGs because of acutely hazardous waste?

Response: Not in 2013, but they are concerned because they have seen a big jump in the number of retail LQGs that are box stores and pharmacies.

Question: Who approve the flexibility plans?

Response: Reviewed at EPA Regional level, but then reviewed and approved at HQs level.

Massachusetts

MassDEP asked for EPA flexibility to implement an alternative compliance monitoring strategy for FFY 2013 air and RCRA inspections. EPA approved a schedule of reduced frequency of LQG inspections in exchange for 100 smaller air pollution sources and SQGs based on risk of non-compliance or compliance history. The alternative strategy applied to about a third of the Bureau of Waste Prevention's inspections of facilities.

They are reducing the frequency of LQG inspections: from once every 5 years to once every 8 years and at least once in the first 5 years of operation for new sites. They plan to defer inspections of high-performing facilities.

The criteria used to select alternative (non-LQG facilities):

- Shipping greater than notified status
- Acutely hazardous waste
- High- risk waste: shipping P-waste or releasing hazardous air pollutants (HAPs) or dry cleaners with pre-1991 equipment that use and ship PERC waste

- Commercial environmental labs: one inspection had significant finding, which led to more; 4 with high MEK waste and 5 commercial labs

The Bureau reviewed the following to select sites:

- Facility master files
- Toxics use reduction (TUR) and Toxics Release Inventory data to identify facilities with high hazard chemicals
- Hazardous waste shipping reports
- Environmental Results Program certifications for dry cleaners

Results for FFY 2013

Inspectors found more violations at alternative facilities than at standard LQGs. Agency has a draft report under internal review and will share it through NEWMOA when it's final.

At the alternative facilities, the violation rate was about 58 percent; and these violations were more egregious: for example, improper manifests, no waste determination; and violating accumulation limits. The LQGs violation rate was about 42 percent: they visited 45 LQGs and about 19 had violations with 2 facing compliance violations.

The types of RCRA violations at the alternative facilities included improper waste disposal (none of this kind of violation was found at the LQGs), improper waste handling, lack of waste determinations, and accumulation limit violations. They found at least one violation during these inspections.

Question: Were these multi-media inspections and how is enforcement handled?

Response: MA conducted multi-media, air and waste inspections that were full inspections at the facilities. They cite both of these media together in enforcement documents. These multi-media inspections are the typical workload for MassDEP inspectors. At the beginning of the fiscal year, each inspector is given a list and number of inspections for RCRA, wastewater, and air with an estimate of the number of hours it is expected to take. A sub-set of inspectors conduct Underground Storage Tank (UST) inspections.

New Hampshire

NH always conducted inspections of 20 percent of its LQG universe for many years. Starting in FFY 2011, they participated in discussions with EPA about alternative compliance strategies. In FFY 2012, they applied for flexibility to do a straight trade-off approach and got approval to flex 7 fewer LQGs and instead replace them with 7 other inspections in FFY 2013. They did not have to track the amount of time required for the flex inspections, but they found that it was equal to the time required for LQG inspections and could show that if needed.

The process of applying for flexibility went smoothly. They submitted a two-page proposal and EPA approved it quickly.

They inspected 12 percent of their LQGs in FFY 2013. The targets of alternative (non-LQGs) inspections were:

- Non-LQG hospitals (inspected 3)

- Commercial labs
- Referrals: coordinated with NH SQG self-certification program to identify problem facilities; and coordinated with remediation, spills, and water programs for sources of groundwater contamination.

The flexibility allowed them to investigate and take enforcement at these kinds of facilities.

Results for FFY 2013

Most alternative facilities had never been inspected before. DES is in the process of conducting enforcement actions for 5 out of 7 alternative facilities. One of them has gone all the way through enforcement; the rest are pending.

They have not yet quantified results in terms of the amount of hazardous waste mismanaged. They found significant violations and penalties at the alternative sites. They are working on their end-of-year report.

For FFY 2014, they have proposed to do further flex inspections. Plan to inspect 10 percent of the LQGs or 11, and 19 other inspections at alternative facilities.

They are coordinating with the SQG self-certification program and focused on those with inconsistencies and data problems in their reports. They are also examining ground water contamination issues and SQGs, like dry cleaners in the vicinity of those locations. In one inspection, they found disposal of HW in a septic line. They are also targeting sites that are closing or in bankruptcy to look for drums onsite and to oversee the site closure.

Without the flexibility, they would not have found all of the issues at the alternative sites.

Question: In their application, did they have to show time for flex inspections = time for standard LQGs?

Response: NH did not specifically have to show this in their application but if that were the case they could.

EPA Region 1

A representative of EPA Region 1 said that applicants need to demonstrate to EPA HQs that there would be no net diversion of RCRA compliance resources and to explain why the state agency wants to shift resources.

In the annual summary report, show the measurement and the outcomes: whether it is greater numbers of violations or not; even if the data do not show what the Agency thought they would, include it and maybe adjust in the next year.

The most important thing was to measure how much waste was unregulated before the inspection. At the beginning of the fiscal year, the three RCRA flex states and EPA decided how they would measure the outcomes and report on them in their final reports. These states would report on the formal and informal actions they took and measure hazardous waste that was mismanaged and unregulated. They considered using some of the Common Measures Project measures, but decided not to use those universally.

EPA Region 1 recognizes that there are a large number of SQGs in the region and that there is an interest in inspecting more of those sites. This is a learning process for EPA. They may make changes in the future.

All 3 states have applied for flexibility for FFY 2014.

RI reported prior to the call that they have not applied for RCRA flexibility because they have seen a decline in numbers of LQGs over the years. That may change as more “big box” retailers and pharmacies re-notify as LQGs.