

Notes

NEWMOA Hazardous Waste Conference Calls November 13, 2018

Topic: Site Closure – What do State Programs Require for Proper Site Closure? How is this Defined by EPA and States? What Are States and EPA Doing to Better Clarify How Sites Can Meet the Definition of closure?

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Participants: CT DEEP (4 people); Mass DEP (5 people); NH DES (6 people); NJ DEP (7 people); NYS DEC (12 people); RI DEM (2 people); VT DEC (1 person); EPA Region 1 (3 people); EPA Region 2 (2 people); NEWMOA (1 person)

Call leader: Terri Goldberg, NEWMOA
Notes prepared by Terri Goldberg, NEWMOA

The participants on the call decided to focus the discussion on how states currently regulate closure of generator sites, particularly Large Quantity Generators (LQGs), and questions for EPA Headquarters (HQs) to help clarify the relevant provisions of the Generator Improvement Rule, especially related to closure of containers. NJ is now implementing the Rule since they adopted it by reference. Because the closure requirements are new for NJ, they are seeking additional guidance. Derval Thomas, EPA Region 2 volunteered to communicate with EPA HQs on the issues identified by the states during the call. NJ is particularly interested in more guidance on what EPA is looking for in terms of LQG closure criteria and would like EPA to elaborate on what is proper generator closure. State authorization deadlines for the Generator Improvement Rule are July 1, 2018, if the state does not need to make statutory changes and July 1, 2019 if they do need to make statutory changes. EPA Region 1 will follow-up the call with more information on the schedule for state adoption and authorization.

Connecticut: DEEP published guidance covering generator closure for LQGs many years ago. They followed the requirements in 40 CFR 265.111 covering removal of waste and residues and 40 CFR 265.114 covering the closure performance standard. CT DEEP found both federal rules to be vague and not specific, which made them difficult to inspect for and enforce. In response, they established generator guidance.

Under their guidance, the process for Treatment, Storage, and Disposal Facilities (TSDFs) and generators is that they must first compile a list of constituents of concern from their records and possibly take samples of waste and storage areas to see if they are present. A physical inspection should be conducted looking for signs of releases to the soil and groundwater, particularly the presence of cracks or gaps in the flooring. If the LQG finds cracks/gaps indicating that their secondary containment did not work, they must investigate further. Depending on the condition of the site, they may have to do soil sampling. If they find contamination in the underlying soil or groundwater, they must remediate the site. CT's approach is considered to be rigorous. It may be more than is needed for a site that has had a well-maintained in-door storage area. To address this concern, CT DEEP developed another guidance document that applies to these operations. It defines well-maintained storage area, and if the facility meets that definition/criteria, they can pressure wash the area and test the wash waters for contamination. This has worked well.

CT DEEP also added SQGs to the LQGs under a modification of their regulations. They referenced federal code 265.113(a) through (c) for the timeframes for closure. The original rule did not specify the timeframe. In particular, these sections added some requirements for the removal of waste within 90-days of the last date of storage and closure within 180 days. The guidance documents are available on the DEEP website at:

- www.ct.gov/deep/lib/deep/waste_management_and_disposal/remediation_waste/RCRA_Closure_Plan_Guidance.pdf
- www.ct.gov/deep/lib/deep/waste_management_and_disposal/remediation_waste/draft_R_CRA_guidance_less_than_90.pdf
- www.ct.gov/deep/lib/deep/waste_management_and_disposal/hazardous_waste/Guidance_ForClosureOfIndoorHazardousWasteContainerStorageAreas.pdf

CT DEEP is considering further changes to its generator closure requirements as part of its current regulation update efforts, including but not limited to: (1) adding a notification requirement for SQGs and LQGs that close a storage area or shut down operations site-wide; and (2) adding a requirement for SQGs and LQGs to document generator closure and keep the documentation on-site so that inspectors can view it during inspections. CT DEEP is also looking at the new requirements for generator closure in the Generator Improvements Rule.

New Hampshire: Does not require closure plans for generators. They require compliance with CFR 265.111 and 265.114 when the facility closes. There is no guidance on their website, but it is covered in their rules (i.e., 506.02). They require generators to notify DES within seven days of closure or when they stop generating hazardous waste. They may inspect the site and declassify it. If they find a company that has closed or moved and left waste onsite, they will undertake enforcement. If the facility finds releases, they must report this to the State.

New Jersey: No policy available. Hard to tell if a place is closed and had an central accumulation area. Site identification forms come in. NJ does have industrial site evaluation requirements that encompass manufacturing operations and many North America Industry Classification System (NAICS). If a NJ industrial facility closes or a property transfer takes place, they have to file a closure plan. They may or may not have hazardous waste. They have to file an information notice for the site. They take action to protect the buyer. They find out information from the notices, and the RCRA program works with the site remediation program (SRP) to address overlapping issues and problems. They investigate whether the site was an LQG, and if so, they visit to find out about the closure. With the Generator Improvement Rule, they will need to look more closely. CT and MA have similar laws within their property transfer programs. The program hinges on the transfer of certain types of establishments, including industrial sites, dry cleaners, furniture repair shops, and auto body repair shops, since these have a history of significant levels of contamination. Properties that come into the program must be subject to an environmental investigation, remedial action, and cleanup if needed. They are subject to corrective action and post closure care.

The property transfer program coordinates with the RCRA program to look for areas where there may be a problem. Transfer of ownership requirements differ from RCRA closure. If there is simply an ownership change, there is no closure involved. If the facility is closed down with no ownership transfer, there is no property transfer and closure requirements apply. The SRP takes care of the site cleanup. But they focus on soil and groundwater contamination and do not focus on contaminated tanks, piping, and building surface areas. These are subject to general closure and corrective action requirements.

New York: In NY, the notifications regarding closure are sent to EPA Region 2. NYS has a two-tiered system. For LQG facilities on a sole source aquifer, requirements for closure are the same as if they were a TSDf, must be clean closed with a certification by a professional engineer. Other facilities that are not on a sole source aquifer, follow the federal criteria and state regulations. Sole source aquifer areas in the State include NYS DEC Region 1, 2 out of the five boroughs of NY City, an area surrounding Schenectady NY, and two counties in NYS DEC Region 7. For those facilities over the sole source aquifer, one of DEC's major challenges is facilities closing without any notification. It can be difficult to convince subsequent facilities to do the closure work. NY has recently implemented within the state superfund program and brownfields program, a mechanism to include closure requirements for past LQGs who have not conducted closure.

Rhode Island: No specific closure requirements for LQGs. They do require notification of final closure. If the site requires cleanup, they must follow State remediation rules. No TSDf's have closed since the 1990s and in that circumstance, DEM would use CT's guidance.

Vermont: Address clean closure in rules for SQGs and LQGs. The EPA Generator Improvement Rule uses elements of VT's rules in the generator closure section. The State standard is broad and reads similarly to the Federal Standard. If a generator is no longer generating HW or managing HW, they have 90 days to control/minimize releases of HW. Applies to all HW management units. The closure standard is that they must eliminate post closure releases. If there is an indication that materials may have migrated to the groundwater, they can use their authority

and bump the site to the site management section and use HW regulatory authority. The State has recently adopted new site cleanup rules. They have a combination of authorities that they can use. The closure process is incorporated into the last rule revisions. The facility must submit a pre-closure notification form 90 days prior to closure. VT DEC has done outreach online and through mailings to promote better compliance with the closure requirements. They require an engineering certification of the closure. This applies to full facility closure and partial closure. They plan to incorporate the requirements of the Generator Improvement Rule. They posted some guidance online a long time ago, and it is out-of-date. They need to revise and update the guidance. They have learned much from the decommissioning of the Yankee Nuclear Power Plant. As part of that effort, they wrote-up an overview of VT's approach to generator closure, which helped them to better define in the decommissioning process what State rules and approaches were and were not superseded by the Nuclear Regulatory Commission.

In NY, they have been working on three areas of the Mill Stone Nuclear Power Plant site. They are requiring additional sampling because of problems with the prior samples. They have received thousands of pages of sample results that are not adequate.

Maine (contributed in writing after the call): Maine's Hazardous Waste Management Rules include closure requirements for generators, except for Maine SQGs. (see 06-096 C.M.R. Ch. 851, § 11). These requirements are excerpted below:

11. Closure

- A.** A generator, who no longer generates waste at a site, shall remove all hazardous waste and hazardous waste residues to a facility licensed to handle the waste. Remaining containers, tanks, liners, bases, materials, equipment, structures and soil containing or contaminated with hazardous waste or hazardous waste residues shall be decontaminated or disposed of at a facility licensed to handle the waste, except as provided in paragraph (B). A generator shall provide 45 days written notice to the Department prior to closure and shall submit to the Department, within 10 days of completion of closure, certification that closure was completed in accordance with the provisions of this rule. The certification shall be made by the generator and by an independent State of Maine registered professional engineer and shall be submitted within ninety (90) days from the date when wastes were no longer generated at the site.
- B.** If a generator conducting closure of a tank system demonstrates that all contaminated soil cannot be practicably removed or decontaminated as required by paragraph (A) above, then the generator must close the tank system and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills under Chapter 855, Section 9(H). In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the generator must meet all the requirements for landfills in Chapter 855, Sections 9(A)(15) and (16).
- C.** As part of the written notice prior to closure in paragraph (A), the generator shall provide the Department with a detailed summary of all past or present releases of hazardous waste or constituents from tanks or containers used to accumulate hazardous waste under

this Chapter. Based upon this summary, the frequency and nature of releases, whether the releases were addressed under a Department authorized remediation plan, and other available information, the Department may require the generator to prepare a closure plan for Department review and approval prior to the initiation of closure operations. The Department will notify the generator within 30 days of a properly filed closure notice if a closure plan will be required to be filed with the Department.

- D.** Change of site or installation ownership, or the vacating of the site by the generator shall constitute cessation of generation and shall initiate closure of all the units which will not continue to be used.

Note: Partial closures are required for those units that will not be used by a new owner or tenant.

Sites are handled on a case-by-case basis in regard to the level of site investigation and sampling necessary to meet the rule provisions. [The Maine DEP's Division of Remediation oversees the hazardous waste closure program, rather than the Hazardous Waste Management Unit.]

Discussion

If an LQG or SQG shuts down and moves away and a new entity moves in to the facility, states generally learn about this after the fact. In these cases, it is difficult to ensure proper closure is done and this may result in enforcement. State property transfer programs can be helpful.

Important to make sure generator closure and the remedial action plan is coordinated with the state's remediation program.

Generator closure is an important section of the Generator Improvement Rule since it is more stringent than past requirements. Pre-Generator Improve Rule HW LQG tanks had to be closed following the requirements for landfills. Now those requirements are extended to container storage areas. Container storage areas are more likely to leak. For tank closure, need to close as if it were a landfill. States are interested in clarity about what clean close as a "landfill" means and how far does close "as landfill" go. It's not clear what is required for proper container closure.

In a recent inspection of an LQG hospital in NY, the inspector noted that the site was closing a closet area and restructuring their building and area. DEC is interested in what clean closure means in this example. The facility is closing a CAA, and the State is looking for guidance on proper closure in this kind of example.

Next Steps

- Derval will write-up questions about proper closure that were raised during the call and share with Terri, and she will share it with the group to see if there are additional questions.
- Once a final set of questions is developed, Derval will share them with EPA HQs for their input and responses.
- Derval and Terri will coordinate on sharing the responses with the full group, either in writing or through a conference call.