

## **Final Notes**

### **NEWMOA Hazardous Waste Conference Calls**

**November 12, 2019**

#### **Topic: Roundtable on Episodic Generation Requirements & Interpretations, Generator Requirements, Notifications, & Biennial Report**

**Disclaimer:** NEWMOA organizes regular conference calls or webinars so its members, EPA Headquarters, and EPA Regions 1 and 2 can share information and discuss issues associated with the implementation of the Resource Conservation and Recovery Act (RCRA), compliance assistance, enforcement, and other topics. Members of the group prepare draft notes of the calls for use by those members that were unable to participate and for future reference by the participants. These notes are intended to capture general information and comments provided by the participants and are not a transcript of the call. NEWMOA provides the participants on the calls with an opportunity to review drafts of the notes prior to posting them on the members' only area of the hazardous waste page on the NEWMOA website. NEWMOA staff makes all recommended corrections to the notes prior to posting.

Any comments expressed by participants should not be considered legal opinions or official EPA or State positions on a rule, site-specific matter, or any other matters. Participants' comments do not constitute official agency decisions and are not binding on EPA or the States. For exact interpretations of a State's or EPA's RCRA regulations, rules, and policies, NEWMOA recommends that readers of these notes contact the appropriate hazardous waste program in the State's environmental agency or EPA Headquarters or EPA Regional RCRA staff.

**Participants:** CT DEEP (4 people); Mass DEP (6 people); NH DES (10 people); NJ DEP (4 people); NYS DEC (12 people); VT DEC (4 people); EPA Region 1 (4 people); EPA Region 2; EPA Headquarters (4 people); NEWMOA (1 person)

Call leader: NJ DEP

Notes prepared by James Paterson and Giles Steele Perkins, Mass DEP

### **New Jersey**

New Jersey DEP (NJ) adopted the generator improvement rule (GIR), including provisions for episodic generator (EG) events and also recently started using myRCRAid. Generators submit EG notifications using myRCRAid or by sending in hard copies of Site Identification forms. Getting about 6-10 per month. One person at NJ acts as the clearinghouse to screen EGs. There's been some confusion in the regulated community regarding EG.

Biggest problem: generators not completing or improperly completing the notification addendum (e.g., invalid phone numbers, incorrect waste codes). Another problem: generators using the wrong date, specifically not taking into account the required 30-day pre-notification notice to agency for approval prior to shipping waste off-site. NJ has had to call EG notifiers to remind them that they need to wait 30 days after notifying and have 60 days after 30 the day wait to ship waste off-site. NJDEP uses this time to review the EG submittals; if something seems off, information is relayed to field office to call or visit site to see what's going on, if they have rusty drums for example. NJ wants EG submittals to explain in detail as much as possible (in comment section) circumstances that led to waste generated.

Example of confusion by generator about dates: contractor removed gym floors that contained mercury at school. School notified when dumpster was already filled with hazardous waste, before 30-day clock had even started. Contractor was unaware of 30-day requirement.

Another problem: EG notifications when a permanent number is required. Example: company doing tank work called it EG. NJDEP reviewed submittal and disagreed, said it was not episodic and generator was LQG since generator could have anticipated ongoing waste generation. Another example of not EG: a notification that looked like reverse distribution for perfumes. NJ would prefer that generators be proactive and change status, instead of submitting EG request, even if they might not go over existing generator status. When NJ approves an EG application from a company, it must have an EPA ID number; temporary IDs are not issued unless it is an emergency situation. NJ charges a \$30 fee if company leaves EPA ID active even though inactive; incentive to close out ID number. Licensed site remediation professionals (LSRPs) are also unfamiliar with details of EG requirements.

NJ stated that labs and schools seem to be the best match for the EG rule; other generators might be better off just changing to LQG status instead of using EG. Bottom line, there are a lot of nuances to the Rule, and as a result there have been growing pains both with the regulated community and at NJDEP.

### **EPA Headquarters**

It's not surprising there is confusion regarding EG. Rationale for EG Rule was to help companies that occasionally have inventory that has to be disposed of (i.e., one-off events) to prevent hoarding. Not always a match for other episodic scenarios. EPA also confirmed that generators that submit an EG notification do not have to submit a biennial report, but there has to be a site ID form for the site.

### **NEWMOA**

Will other states use the central point of contact model like NJ? NY, yes.

### **Connecticut**

CT has not adopted GIR yet but plans to. CT generators currently follow long-term guidance per CT DEEP:

[https://www.ct.gov/deep/lib/deep/waste\\_management\\_and\\_disposal/hwac/may2010/episodicgeneration\\_rqb\\_5\\_26\\_2010.pdf](https://www.ct.gov/deep/lib/deep/waste_management_and_disposal/hwac/may2010/episodicgeneration_rqb_5_26_2010.pdf), which is based on 1986 *Federal Register* notice. Generators must comply with higher level generator requirements while in higher generator status. Episodic generator notifications are not a reason for an inspection by CTDEEP, unless they get a complaint. However, if they find "episodic" status in routine inspection may do enforcement. Generators acting as an LQG temporarily must do a Biennial report (if a BR year), but generators will not have to submit one once CT adopts GIR.

CT issues CTP (temporary) numbers if generator has no EPA ID number. CT considers "episodic" to be a status change that occurs less than annually; if clean-out event happens once a year, generator must get a permanent EPA ID status. One of CT's challenges is assigning EPA ID numbers to remote sites (i.e., pipelines, manholes, etc.) and holding them to requirements of containers, tanks, Contingency Plan, etc.

CT issues its own temporary ID numbers (CTP + 9 digits) on-demand and not through RCRAinfo. CT subsequently enters the temporary IDs into RCRAinfo. This approach provides CT with more control of the process of issuing temporary IDs. To avoid having to make a temporary generator status changes to SQG or LQG and comply with their requirements, CT encourages generators to plan ahead as much as possible by: spreading out waste generation, having waste management plans in place; using waste minimization as much as possible; and if feasible, shipping on date waste is generated to avoid having to comply with generator accumulation requirements; or managing as a satellite accumulation (ok to go over 55 gallons if gone in less than three days). Other suggestions in PowerPoint presentation shared by CT DEEP.

CT plans to adopt some of the GIR (including the episodic generator provisions) with its current full regulation rewrite and go to public notice next year.

### **Massachusetts**

No plans to adopt GIR for at least another year. Started using myRCRAid in July 2018. Over 5,000 MA generators that had ID numbers with an MV prefix obtained new EPA ID using myRCRAid. MA no longer allows temporary ID numbers; for a one-time shipment, generators have to obtain a number on myRCRAid, and then inactivate it after the shipment. If generator plans to go above its current status, must notify using myRCRAid, then make change again using myRCRAid after exceedance/episode. Some Regions accept letters of status exceedances that are posted in the file for inspector review. If it's a Biennial report year, generator has to submit BR if it was an LQG, no matter how briefly. Fee program for SQGs and LQGs ensures that generators change status back after exceedance, and also provides incentive for SQGs and LQGs to inactivate site IDs once they stop generating hazardous waste. There is an ongoing issue with who gets an ID# for boats and their oily bilge water in New Bedford. Like with CT, EG notifications do not necessarily prompt an inspection, but enforcement may be taken if an EG even occurred and was not reported.

### **EPA Region 1**

MyRCRAid can accept any ID# with beginning with a state's first 2 letters followed by another letter and 9 digits.

### **New Hampshire**

NH is planning next year to adopt the GIR and pharmaceuticals rule. NH issues temporary IDs for EGs for 30 days. Generators can call to notify if exceed(ed) status. Do not inspect sites who notify. If a BR year, episodic generators must submit a BR, but NH DES often does the BR submittal for the episodic generator by using available data.

### **New York**

NY has not taken on the 8700-12 part of program and has not adopted GIR/EG. NY has an Annual not Biennial Report requirement for LQGs, and a separate regulatory fee requirement triggered for > 15 tons of waste generated which will not change for episodic events. Generators that are temporarily an LQG may need to comply with secondary containment and closure requirements in areas over designated sole source aquifers.

Possible adoption of GIR and EG in 2021. NY has been receiving one or more call per week from generators that want to use EG, even though it's not an option to operate under yet. Even

if/when NY adopts EG, generators may still be subject to fees and taxes (per statute) when they go up to a higher status however, briefly.

### **Vermont**

VT will pick up EG in the future. Currently, issues temporary IDs for one-time events for 90 days. VT will look at EG requests in context of facility history, if possible. Facilities that have notified that go up to LQG status must file a BR, unless they have a provisional number. VT does quarterly review of manifests from VSQGs; if over VSQG amounts, inspectors may follow-up with inspection. If waste exceedance is routine, VT directs generator to notify with a higher status.

### **EPA Region 1 & Headquarters**

On September 1, 2021, SQGs will have to re-notify and every 4 years thereafter. EPA is asking states to at least pick up this part of the GIR since it will not otherwise be enforceable by EPA, as a HSWA requirement, to improve SQG universe. MA stated that its universe is pretty accurate given the associated registration fees that are a financial incentive for generators to be aware of their status. Questions arose about ability to adopt only this part of the GIR and the rule allowing later adoption of GIR. CT stated that processing the re-notifications will be time consuming, and that it would be helpful if states could receive “beans” for this task under PPA/PPGs. EPA said it will consider that suggestion and acknowledged that the first round of processing re-notifications will be a heavy lift since it has been a long time since many states have checked on many of these older notifications. CT stated that states may be more amenable to picking up the generator re-notification of the GIR if they got a bean from EPA for completing the task.