

Draft Notes
NEWMOA Hazardous Waste Conference Call
December 13, 2011

Topic: Generator Closure

Participating states: CT, ME, MA, NH, NJ, NYS, RI & VT; EPA Region 1 & EPA Headquarters

Notes prepared by Bob Bishop, NH DES

Review of Future Calls

1/12 Fuel to Fuel

2/12 Maintaining Effective Programs

3/12 Outdoor Storage

4/12 CT On-line Resources for Generators- Webinar

Note- conference call notes are posted in the member's area of the hazardous waste webpage of the NEWMOA website

Generator Closure Issues- VT DEC Topic

SQGs and LQGs are required within 90-days to close, remove wastes, and remediate contamination.

VT: State regulations have a provision that requires SQGS and LQGs to follow generator closure (i.e., removal, cleaning, and remediation of contamination). 90-days prior to closure generators must submit a closure plan (guidance link with closure performance standards: http://www.anr.state.vt.us/dec/wastediv/rcra/pubs/closure_guidance.pdf).

VT has had mixed compliance results generally because generators are unaware of the requirement; this has caused problems when the facility is being prepared for reuse and there is remaining contamination.

Questions for other states: Do other states have similar closure provisions? How do you get the word out? How do you oversee compliance? How do you keep track of facilities going out of business?

CT: Discontinue use of storage areas based on a partial closure provision, notify but not required to submit a plan.

MA: Issues include cessation of waste activities but now generating as part of closure activity. Closure then causes a generator status change to an LQG. Is there a limited number of times a facility may be in closure? Often proper closure is a factor of money. The generator is required to complete closure within 90-days of cessation of activity. CESQGs that generate LQG amounts must comply with the 90-day accumulation time limit.

CT: Does closure include the entire facility (or just the storage area)? Process equipment?

VT: Yes, the entire facility, including outdoor areas.

CT: CT has a similar set of provisions to VT; a new set of regulations is being written to what is currently “guidance” in the regulations. Currently, LQGs and SQGs perform closure when hazardous waste activities are discontinued. 40 CFR 265.111 requirements are incorporated into the regulations. There is guidance for generators regarding the expectations that are required to be met for compliance. CT has received criticism from industry because this guidance is not part of the regulations. CT has a closure performance standard that is applied “unit by unit” (individual storage areas) as opposed to an entire facility. Link to CT DEEP closure guidance:
http://www.ct.gov/dep/lib/dep/waste_management_and_disposal/remediation_waste/draft_RCRA_guidance_less_than_90.pdf

Trigger language in 265.113 a., b., and c. for time frames and whether or not a plan is required or needs approval can be confusing. CT has no specific recordkeeping requirements. The regulations are being revised to address both of these concerns. And to clarify activity timing standards, including recordkeeping and a closure report with required elements. The regulations may be designed to require certification by a CT Licensed (Engineer?)

CT DEEP is developing BMP guidance to help with the closure of container storage areas. The BMPs will be broken into 3 sections: waste removal, cleaning/decontamination, and disposal/reuse records. Facilities must conduct sampling to verify the area is clean with examples of how to clean. The closure is to be followed up with a one- page summary to fill-in how the procedures were performed. The document will be finalized once the new regulations are adopted.

VT to CT: Are the new regulations based on the 265 requirements?

CT: Yes

VT to CT: Will you require a closure plan?

CT: No, we will require a closure report (post-closure). CT’s property transfer program was kept in mind when developing the guidance. Generator would be required to retain a copy of the report, but would not be required to submit it to us.

ME: Similar regulations to VT. Maine emailed an excerpt from its regulations and a closure report outline (attached). The Maine regulations are equivalent to the federal requirements for SQGs and LQGs, including HW notification 45 days prior to cessation of the generating processes (not cessation of remediation); notification includes a list of the facility’s spill history. The spill history and other information is evaluated within 20 days to determine if a closure plan is required. Closure should be completed within 90-days of cessation of generation; the time frame can be extended depending on the extent of contamination. Closure requirements apply to the entire facility including contiguous property areas controlled by the operator. When the property can not be cleaned to unrestricted use standards, covenants are placed on the property to address control issues.

Closure requires a report and certification by a Maine Professional Engineer and the facility.

Maine DEP is not sure if generators are aware of the requirements; they are also looking for a good way to get the word out. Maine contacts generators to remind them if they are aware that the facility may be closing. Bankruptcy notices are often the means by which the DEP finds out. If the operator left the facility without completing closure, Maine will work with the landlord to perform closure. Closure requirements do not extend to CESQGs. Maine uses a provisional number for CESQGs if generator status changes.

VT to ME: What is your experience with the list of spills? Is there both an indoor and outdoor reporting requirement?

ME: Yes, the reporting requirement pertains to both indoor and outdoor spills; all reported spills must be summarized.

MA: MA has general closure requirements, requiring the waste to be removed and the site to be remediated (i.e., decommissioning and decontamination). MA has a hard time finding out who is going out of business; DEP often hears about a facility closing through the newspaper/media. Face problems with the amount of time it takes to clean-up sites.

CT to MA: Is a plan required?

MA: No upfront plan is required. Closure requirements apply to SQGs & LQGs

NH: New Hampshire generators are not required to have a closure plan. Generators are required to notify DES within seven days of ceasing hazardous waste activities at a particular site. Generators use a Declassification Form to do this certifying that all hazardous waste has been removed from the site. All generators (i.e., CESQGs, SQGs, and LQGs) need to meet the closure performance standards of 40 CFR 265.111 and 265.114 for disposal/decontamination of equipment, structures, and soils (Env-Wm 506.01(d)) which includes:

1. Minimize the need for further maintenance;
2. Control, minimize or eliminate, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and
3. All contaminated equipment, structures, and soil must be properly disposed of, or decontaminated by removing all hazardous wastes or hazardous constituents.

Generators that cease operating their facility need to continue to manage their hazardous waste in accordance with all applicable generator rules. Failure to continue such management shall be deemed disposal of the waste (Env-Wm 506.01(e)). Example: Generators need to comply with storage time requirements (i.e., ship hazardous waste off-site within the 90-day accumulation time limit).

New Hampshire conducts CEIs (and PEIs) at larger facilities and those with a history of non-compliance or contamination. NH is usually unaware of CESQGs that are closing

and typically learns of a facility closing through CESQG Self-Certification program; the CESQGs must notify but it typically takes prompting by NH DES.

Attached is a typical letter issued by NH to document a closure inspection and to remind/prompt compliance. Closure rules are cited and prompting that materials that remain in process and storage tanks become wastes after 90-days unless they are actively managed.

NJ: NJ has adopted the federal requirements and will cite 40 CFR 265.111 to facilities that are closing. NJ has nothing else that is specific to generators concerning closure procedures. DEP utilizes SIC code information from EPCRA records to identify companies that have closed. If there is contamination, NJ DEP tries to find the operator and then goes to the property owner to initiate clean-up. NJ does not have enough resources to go to all closed sites. If generator status changes as a result of closure activities, the facility must follow the rules pertaining to the new generator status.

NY: NY has similar closure requirements to 40 FR 265.111 and 265.114 for SQGs and LQGs. The State has experienced several hospital closures recently, these are uniquely challenging. NYS DEC usually learns of the closure after the fact.

RI: A generator closure plan is not required. If a facility deactivates their generator status, an inspector will work with the facility regarding waste disposal/contamination. clean-up. RI does not make distinctions based on generator status as it pertains to closure. RI DEP is developing a new closure rule. The new rules will require a closure report. RI will share the new rule when it is completed.

EPA via an email after the call:

EPA has an Agency workgroup to address a series of improvements to the hazardous waste generator program. They include clarifications to the regulations plus topics that improve program effectiveness. One area is generator closure. Our closure regs are currently buried under 262.34 (a)(1)(iv)(B) following a discussion on containment buildings. You have to search long and hard to find the discussion. Once you find it, the reader will see that generators (LQGs only) need only comply with 40 CFR 265.111 and 265.114 - at least that's what it implies. But once you get to 265.111, that citation sends you to other citations dealing with specific waste accumulation units. So the first thing we are doing in the workgroup is proposing to rewrite the generator closure regs to be more clear about specific requirements. We would most likely move the applicable sections of 265.111 and 265.114 into 262.34.

Second, as part of the workgroup we are also exploring changes that might improve program effectiveness. For example, we are exploring whether to expand closure requirements to SQGs, whether to require generators to notify EPA or their authorized state that they intend to close either their waste accumulation unit and/or facility, and whether to require generators to either notify or even certify that they have closed in a manner that meets the requirements of 265.111 and 114. These ideas come from

discussions and info provided to me by Vermont and Connecticut. Whether any of these ideas catch hold remains to be seen, but at least we are exploring their feasibility.

I might add one issue brought up yesterday that appears problematic is the effectiveness of generators already subject to closure notification actually notifying their state. This seems critical. Lots of facilities just close up shop, and EPA and the states are left with the cleanup. How best to change that behavior and facilitate generators actually notifying their state?

NEWMOA: asked about taping conference calls in order to compile more accurate notes. NH and CT mentioned that Bill Sirull (MA) has some opinions on the matter and it should be discussed with him. NEWMOA will follow-up with Bill to discuss this possibility. The EPA RCRA Interpretative Network (RIN) organized by Jim O'Leary tapes their call for note taking purposes.