

Draft Notes
NEWMOA Hazardous Waste Conference Call
May 14, 2013

Topic: Measuring the Benefits of RCRA and Outcomes of RCRA Inspections

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Participants

Participants: CT DEEP (10 people); ME DEP (4 people); MassDEP (2 people); NH DES (6 people); NJ DEP (4 people); NYS DEC (5 people); EPA Region 1 (3 people); EPA HQs (3 people) and NEWMOA (1 person).

Draft notes prepared by Ross Bunnell, CT DEEP with help from NEWMOA; call led by Tod Leedberg, NH DES.

Introduction

Terri briefed the group on her progress in finalizing plans for the annual NEWMOA face-to-face HW inspector training for New England coming up in June. She reminded everyone to register. Pursuant to a question from the participants, she indicated that registration was open, and would continue through about June 21st.

Terri mentioned that she had sent out a Doodle meeting request in order to schedule another HW Manifest Workgroup conference call, and reminded listeners to log into Doodle and indicate their availability.

Benefits of RCRA Inspections

Todd Leedberg from NH DES began the main portion of the call by reviewing the write-up and list of key questions that NH prepared and shared with the participants. Todd reported that NH is grappling with the fact that the EPA's State Review Framework outlines the "beans" that state

RCRA programs must meet, but there is little information about how to measure the actual benefits to the environment from inspection programs. He explained that NH DES had obtained flexibility from EPA to deviate from the 20 percent large quantity generator (LQG) inspection requirement. NH DES would like to use this flexibility in order to look closer at non-LQGs in their state. To justify this, DES will have to show in their end-of-year report to EPA that the flexibility resulted in measurable benefits. Two other states in Region 1 – Massachusetts and Connecticut – have also requested this kind of flexibility.

The three states recently had a conference call with staff from EPA Region 1 and Headquarters to brainstorm about how to report the benefits of the inspection flexibility in their annual reports. An idea that came up was to use Common Measures Project Indicators. These are already typically recorded in inspection reports, so would be easy to track and quantify. NH DES plans to examine at the size and types of violations at the non-LQG sites they inspect and compare them to the violations that they see at LQG sites. DES also intends to document the amount of waste properly managed versus improperly managed. NH DES obtained permission to substitute 7 of their required LQG inspections (10 percent of their total LQG universe). A non-LQG site that NH DES inspected in lieu of the 7 LQGs was identified pursuant to their SQG Certification Program and was found to have been mismanaging a large amount of hazardous waste. This site will make a good case study in support of the flexibility that was afforded to NH DES by EPA. By the end of the year, NH DES will have inspected at least 19 non-LQGs (close to double the amount of non-LQGs that usually inspect each year) under the flexibility that EPA has approved.

Each state spoke in alphabetical order to address the following questions:

- 1.) What has your state done to measure the benefits of RCRA and outcomes of RCRA inspections?
- 2.) How would you answer your Commissioner's question of "How are you doing with your inspections?"
- 3.) What ways do you see States and EPA measuring benefits and outcomes going forward?
- 4.) Comments on the above ideas for the End of Year Reports.

Connecticut

Question 1: George Dews, CT DEEP indicated that CT has also received flexibility from the 20 percent LQG inspection rate. CT has about 300 LQGs and 8 TSDFs. Instead of 20 percent of its LQG universe, CT DEEP received approval to inspect 10 percent (30), and will cover 50 percent of its TSDF universe (4). DEEP intends to review outcomes by:

- Determining the amount of hazardous waste that was mismanaged as noted during each inspection (converted to an annual basis);
- Determining the number of violations noted during each inspection.

The non-LQG sites will then be compared with the LQG sites. The sites that will be inspected in lieu of the 10 percent of the LQG universe for which CT DEEP received flexibility include "manifest discrepancy" sites gleaned from manifest data (i.e., companies that appear to be operating outside of their notified generator status). Although the violations cannot be compared one-to-one with LQG violations for these sites (since sites that are operating out of status often have more violations than properly-notified LQGs), it will at least be possible to make some sort of analysis of the two groups of inspections. Hopefully, the results will back up the reduction in LQG inspections. If not, at least CT DEEP will learn from the experience and be better able to

prepare for the next fiscal year cycle. However, DEEP anticipates finding more violations among the manifest discrepancy sites than properly-notified LQGs. CT DEEP plans to do 112 inspections in the year, plus 60-80 complaint inspections. Thus far, CT DEEP has found one case study in support of the flexibility that might be of interest to EPA, namely a casting company that was found to be burning magnesium outdoors, releasing contaminants to the air and ground.

Question 2: To date, CT DEEP is about 50 percent of the way through the inspections it committed to do, which is pretty much on track. Based on the inspections performed thus far, there seem to be more violations for the manifest initiative site inspections than the LQG inspections, and about 49 tons of waste were found to be mismanaged at the manifest discrepancy sites versus about 19 tons at the traditional LQG sites. So, the numbers appear to be bearing out.

Question 3: CT DEEP will have to wait until the end of the year (when all the data is in and can be evaluated) to determine how to measure benefits and outcomes going forward. If CT DEEP meets its goals based on the number of violations and tons of waste mismanaged, it may proceed on the same basis next fiscal year.

Question 4: See above regarding the two measures that CT is tracking (i.e., number of violations and tons of waste mismanaged). CT DEEP may add other criteria or information in their annual report.

DEEP reported that using their new measures has not really changed how they perform inspections because they have been collecting much of this information anyway during inspections.

Jim O’Leary of EPA Headquarters asked for clarification on the “mismanagement” indicator that CT DEEP uses. How does CT define “mismanagement” (e.g., any violation or only those resulting in releases to the environment)? George Dews answered that the amount of waste that is mismanaged is determined by the amount of waste the generator manages above their notified status.

CT DEEP will be reporting the two measures mentioned in its end-of-year report to EPA along with any good case studies that it comes across that illustrate the value of inspecting non-LQGs. With EPA’s consent, all three of the Region 1 states that received flexibility from the 20 percent LQG requirement will be taking a similar approach in terms of quantifying and reporting the benefits.

If the annual report does not bear out the idea that doing the non-LQG inspections was worthwhile, CT DEEP will revisit their approach and decide what to do in the future.

Maine

Question 1: Mike Hudson from ME DEP indicated that they have not requested any flexibility from the 20 percent LQG inspection requirement, and that they have not employed Common Measures or other approaches for that purpose. But, they can offer some insights from the last five years of inspection data, and from strategic planning and in-house discussions about how to

measure the benefits of RCRA. ME DEP recognizes that a major issue to consider is that RCRA is a preventative requirement. As a result, ME DEP considers every time that they cite a violation or issue a notice of violation (NOV) that action is itself a deterrent to mismanagement of hazardous waste and a positive outcome. Similarly, the consent agreements and penalty cases that they issue provide a direct and indirect deterrence to mismanagement of hazardous waste.

When ME DEP finds sites at which actual releases have occurred, they pursue enforcement to require remediation of contamination or cleanup/removal of waste that will cease the releases to the environment. In terms of data for measures, ME DEP has not tried to assess their LQG inspections versus their non-LQG inspections. However, ME DEP does about 100 inspections per year, and sees about 85 percent of LQGs receiving NOVs versus about 78 percent for non-LQGs (i.e., similar numbers). These numbers do not address the severity of the violations noted, however. Taking a look at their consent agreements, about 8 percent of the 65 LQG inspections over the last five years resulted in consent agreements, as opposed to about 5 percent of the 325 non-LQG inspections (again, comparable numbers).

ME DEP has never assessed the quantity of waste mismanaged in its inspections.

ME DEP's typical penalty amount for LQGs over the last five years ranged from about \$3000 to \$88,000.

Massachusetts

Question 1: Mass DEP is pursuing an alternative compliance monitoring strategy. Mass has 430 LQGs in its universe, which would have required 86 LQG inspections under the 20 percent requirement. DEP will reduce this commitment to 54 LQGs (i.e. from 20 percent to 12 percent of the LQG universe). The sites they will substitute for the 8 percent of the LQG universe that was reduced will consist of small quantity generators (SQGs) and very small quantity generators (VSQGs). The criteria that Mass DEP will use to select candidate SQGs and VSQGs include:

- whether or not they use CERCLA chemicals;
- whether or not they are involved in another Mass DEP program (e.g., water or air); and
- whether or not their waste generation data is inconsistent with their notified status.

Mass DEP compiles all penalty cases in a database and attempts to quantify the amount of waste that is properly managed as a result of their enforcement actions. DEP cannot quantify how much waste was mismanaged, however. In 2011, they determined that 500,000 pounds of hazardous waste was properly managed as a result of their efforts. For smaller generators, Mass DEP has a special sheet that they use to compare facilities and compare with LQGs inspected in the past.

They decided to pursue flexibility on the 20 percent LQG inspection rate because they felt that by inspecting more of the smaller generators, they could get more "bang for the buck." In particular, in Mass DEP's experience, 20 percent of smaller generator inspections result in enforcement as compared to 8 percent of LQGs.

Question 2: Mass DEP feels that it is doing well, and is on target.

Question 3: Mass DEP is not sure at this time how it sees measuring outcomes going forward, since it needs to wait until the end of the year and examine the full year's data.

Question 4: Mass DEP will also have to wait until the end of the year regarding how it will prepare its annual report.

Mass DEP defines a “VSQG” as the generator category corresponding to federal CESQGs. Mass DEP is replacing the 32 LQG inspections with 100 smaller-sized generators for 2013.

MA’s Flexibility Plan (Alternative Compliance Management Strategy) has been approved for one year by EPA, in alignment with NH’s and CT’s approvals. CT DEEP and NH DES noted that their agreements were for one year only.

Mass VSQGs have non-federal requirements that apply to them that Mass DEP has to inspect for, which increases the complexity of these inspections beyond a federal CESQG inspection.

Are any states are using criteria to select the non-LQG generators other than manifest data? CT DEEP indicated that they are also looking at junkyards because that sector has historically been noted as having problems. Todd Leedberg of NH DES indicated that they have brainstormed about the types of facilities that they plan to inspect in lieu of LQGs, and considered hospitals, and universal waste handlers, so they will have a wide variety of facility types in the group of sites that they are inspecting under the flexibility approach.

Mass DEP noted that the 400,000 pounds of waste that they documented as being under proper management as a result of the inspection/enforcement aggregates the amounts for each violation cited and is estimated based on the amount of materials noted during the inspection.

Mass DEP has developed a model to estimate how much waste was properly managed after the enforcement action. Their database also includes air, water, and asbestos as well as hazardous waste.

Comparing the numbers obtained by CT DEEP, Mass DEP, and NH DES and their methodologies would provide for an interesting discussion during a future conference call.

New Jersey

Question 1: New Jersey DEP indicated that they have been struggling with the concept of measuring outcomes for a long time. DEP is developing a “Balance Scorecard” system that is based on a business-oriented measures system. DEP has been working on its “Scorecard” system for two years and it is still not finished. The scorecard is intended as a measure of the NJ DEP’s performance, and it will not really change what they report to EPA. The scorecard and the reports to EPA are separate and will not overlap.

DEP also has a lot of information in their facility “NGENS” database system that allows tracking of the number of violations at a given site over time. DEP has also had a lot of inspection initiatives. Fortunately, they have not seen the staffing problems that other states have, so they have been able to meet the 20 percent LQG per year requirement and have resources left over to do other types of inspections as well.

Question 2: NJ DEP is meeting its inspection goals.

Question 3: NJ DEP has workplans for each year regarding the number of inspections, compliance assistance visits, and other activities, and they expect that they will meet them.

NJ DEP conducts compliance assistance visits like regular inspections and obtains credit for them. They do these inspections in particular at new generators. In addition to the usual inspection tasks, their inspectors also provide compliance assistance information. The generator gets a one-time chance to correct any violations that are found without experiencing enforcement or a penalty (as long as the violation is not severe in nature). NJ DEP tries to conduct one of these inspections shortly after each new generator notifies, but they are not always able to get out right away.

NJ DEP is not aware of any sites that refuse one of these inspections. The companies are usually very happy to get the timely help when they are just starting up, or perhaps are afraid to say “no.”

CT DEEP reported that it is examining using the same type of approach for new LQGs, and asked NJ how they log these inspections in RCRAInfo, and whether or not EPA gives them credit for them (EPA has said that CT DEEP would not get credit for them as CEIs). NJ DEP indicated that they thought these inspections were logged as regular inspections (CEIs) and that EPA gave them credit for them, but they were not sure (they will look into this).

New York

Question 1: NYS DEC has no LQG flex plan, but that they are talking with EPA about it. A problem that NY has found is that some of the LQGs they go to are actually operating at a lower status at the time of the inspection (i.e., SQG or lower), which hurts their numbers and makes it harder to achieve 20 percent of their universe each year. Due to this problem, they have an agreement with EPA to receive partial credit for these inspections. DEC plans to conduct 175 LQG inspections this year out of a total number of 836 inspections. NY is thinking about the possibility of getting a “better bang for the buck” by checking a larger number of smaller generators, especially those located over sole-source aquifers. NYS DEC is tracking the most common violations that they see over time, which is a useful measure, but it is hard to account for the severity of the violations in RCRAInfo. Nevertheless, NY is trying to find a way to track the severity of these violations. One issue they have seen is that inspecting smaller generators may reduce the number of enforcement actions that are taken, which can leave an unfavorable impression.

Question 2: NYS DEC believes it is fulfilling the expectations of its management.

Question 3: NYS DEC is looking closely at timeframes for achieving compliance, and completeness of inspections (the latter being rather hard to measure). One way to address the completeness issue is to repeat an inspection with another inspector, but this is of course very resource-intensive. Therefore, NYS DEC focuses on documentation of inspections and making sure that reports are complete. Another challenge for NY is consistency across the whole state. NYS DEC is addressing this issue with staff training.

Question 4: NYS DEC sees a benefit in tracking certain trends (e.g., when you can show that numbers of violations are going down, that reflects well on the program). In addition, enforcement creates a deterrent, which increases compliance by others.

Discussion

Robert Isner, CT DEEP commented that all the states and EPA have been looking at how to measure the benefits of RCRA for a long time, and that it is a hard task to do with a preventative program like RCRA; it is hard to link outputs with outcomes in this program.

Terri agreed, and recalled discussions many years ago within NEWMOA about how to measure the benefits of RCRA. However, she commented that ideas like counting the amount of waste that was mismanaged (or managed properly) as a result of state efforts seemed interesting and that it would be interesting to revisit these issues further as a group at some point in the future. There was general concurrence with this idea. Also, Terri commented that assessing trends regarding top violations could be useful measures also because they can enable an agency to target outreach to alert companies to the most common violations to make them aware of what they need to proactively address and correct.

Robert Isner, CT DEEP agreed with Terri's comments and indicated that CT DEEP targets outreach based on measures like most common violations. However, he expressed a concern that it is tough to get credit from EPA for compliance assistance type efforts, and that it is hard to measure the results of compliance assistance and prove to EPA that such efforts are worthy of states' time.

Todd Leedberg, NH DES stated that the efforts of the three Region 1 states are a good start to help states move away from the old standards for measuring the success of RCRA programs, and will get the ball rolling to improve the measures everyone uses. He agreed that it would be good for NEWMOA states to reconvene on this topic and compare/discuss the first year's results.

Terri asked if states should be looking at the frequency of the most common violations in each state. She described some experience she had with using an approach like this in an outreach project to the plating industry sector.

Terri also asked about whether NYS DEC's training was comprehensive ("soup to nuts") or topical and focused. DEC indicated that they try to cover the basics in the time they have (2-3 days) but that is not really enough time to achieve a "soup to nuts" level of training. Their goal is to cover the basics and ensure consistency across the state.

Terri asked if other states have any needs for basic RCRA training, particularly within the context of the upcoming face-to-face training this June. Robert Isner of CT DEEP indicated that CT does not really need such training since it has not hired any new staff recently.

NJ DEP clarified that its' previous request for training had to do with OSHA HAZWOPER refresher training not RCRA training, per se. NJ could use this as a way to prevent its inspectors from being refused access during inspections.

Steve Yee of EPA Region 1 suggested that NJ DEP check with Region 2 staff to see if they might have some OSHA refresher training available.

Terri noted that the next monthly call will be July 9 due to the upcoming face to face training, and that the topic for the July call would be testing demolition debris, especially as it relates to lead. NJ and CT will present information on their experience in this area during this call.