RCRA Permit Writers' Conference Call Summary

Ex. 6 Personal Privacy (PP)

Date: Tuesday, April 7, 2020 **Time: 12:00 – 1:30 pm, ET**

Disclaimer

The RCRA Permit Writers' Conference Call Group is a group of individuals from EPA Headquarters, EPA Regions, and the States who meet regularly to informally discuss issues associated with the implementation of the RCRA permitting program. These notes are intended solely to capture the content of the conversations. Participants' comments do not constitute official agency decisions and are not binding on EPA or the States. Any comments expressed by participants should not be considered legal opinions, or official EPA or State policy.

TOPICS

1. **OECA COVID-19 Enforcement Policy Memo** (this was sent out earlier) **Pete Raack, OECA**
   [HYPERLINK "https://www.epa.gov/enforcement/enforcement-policy-guidance-publications" \l "covid-19"]
   [HYPERLINK "mailto:raack.pete@epa.gov"]

- Pete provided an overview of the memo and took some questions.
- The memo was issued on March 26, 2020 and is retroactively effective to March 13.
- The basis for the memo is from an enforcement standpoint and for enforcement discretion for non-compliance due to COVID-19 – related reasons.
- Memo is only for EPA and enforcement. It doesn't change any rules, but how we will respond.
- The memo lays out a process.
  - Facilities are still expected to comply
  - If facilities cannot comply for COVID-19—related reasons then they are to:
    - Document the reasons for non-compliance
    - Minimize the effects of non-compliance
    - Minimize the time of non-compliance
    - Return to compliance as soon as possible
  - After the fact, the Agency will employ enforcement discretion, considering the facility information

- For authorized programs, facilities should reach out to their authorized states, those states would reach out to their Regions, and Regions would reach out to HQ.
- An underlying rationale is that facilities will act reasonably and we will respond reasonably

NY asked that when we've received information directly from facilities, are the respective states informed?
  - We're trying to be sure that does occur

Training-related information

The Training Exchange Website: [HYPERLINK "http://www.Trainex.org"]

RCRA Training Website (hosted via *ERTP Virtual University*): [HYPERLINK "https://ertpvu.org/Home.aspx"]

RCRA Expert Brownbag Series: [HYPERLINK "https://clu-in.org/conf/tio/RCRAExpert/"]

2. Discussion on COVID-19 Impacts to Permitting Programs — Tab Sommer, ORCR

- Are state programs and facilities working together remotely?
- Share methods used to continue progress

[HYPERLINK "mailto:Sommer.tab@epa.gov"]

CT – yes, facilities are working with CT. A renewal permit application was submitted on 3/26/2020.
NH – Yes, facilities responding to letters requesting information.

Are people making the materials electronically available?

CT – Yes, but the problem is with mandated meetings required by the CT regulations. Coordination is needed with the State office, the meeting site and the applicant, and all are in lockdown/shutdown.

State – We would like to make materials for public notice available on the agency website.

Other State – Yes, we put info on website but also need to notify town officials, notify on radio. If we were to change to virtual hearings, we would need to resend all the notices with info for virtual hearing.

NY, Lynn Winterberger

– Since we had asked for electronic and hardcopy information for the permit application, we have it.

- We are able to review the applications remotely. Some essential facility Staff are available to answer questions.

- My staff can upload the information to the NY Environmental Notice Bulletin.

- We do not see a problem with finalizing the permits unless a public meeting is requested. These permits are to controversial, so we do not expects meetings to be requested. NY is open to virtual hearings, but as CT said, the information is so complicated. It is easier to understand the questions during in-person meetings.

R9, Mike Zabaneh

States are proceeding with the permits, Except, need more time for facilities in "activist communities" to do public participation.

States are not doing virtual hearings do to EJ concerns. Difficult to justify having virtual meetings/hearings in EJ areas.

MO, Rich Nussbaum

- There are information repository issues with libraries being shut down.
- Facility preapplication meetings are also delayed (cant have more than 10 people).
- also – delay with public participation in permit mods

ORCR, Tab

We will send out interim guidance soon that addresses use of virtual meetings and public participation issues impacted by social distancing / COVID-19 impacts.

NY, Lynn Winterberger

- Is EPA extending the timeframe for the deadline for permit applications (in order to administratively continue)? Applications are due 180 days prior to permit expiration.

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- Assume they will need extensions.
ORCR, Tab – We will get back to you on that

MO – used facebook live recently to do a meeting. They were able to do a good job at answering questions from the public.(this is archived and still available). The General Council approved it. They are proceeding with using the method for Class 2 mods.

3. Potential Update of EPA Models that Simulate the Potential for Waste Remaining in Land Disposal Units to Impact Groundwater **Lilybeth Colon, ORCR**

Opportunity to verbally share comments and perspectives on the document recently shared with the group on a modeling tool that could help inform post-closure care decisions, e.g., by considering whether future releases from a landfill might cause groundwater to exceed risk-based concentrations under reasonable exposure scenarios.
[HYPERLINK "mailto:Colon.lilybeth@epa.gov"]

ORCR, Lilybeth
- Refer people to the attachment sent out with the agenda
- The workgroup is looking to do the following (comments?)
1. create a checklist for certifications to end PCC.
2. Provide training
3. Work on the model – see attachment
    - how do we make this model most useful for you.
    - covered details of the model
    - This should help in assessing the facility after 30 years PCC and the fac wants to end PCC.
    - We need to model different situations.

R5, Todd Ramaly -
- Did you use the IWEM (SP?) model specific to waste management units?
Lilybeth – that was not as user friendly. Will try to modernize the model for use in the future.
Will follow up with Todd on this.
R6 – what about financial assurance after 30 years of PCC?

LA, Will Steele – It is more difficult to require financial assurance after 30 years since regs do not specify. Need to plan and have good permit language.

IL, Rob Watson – Do not support the model if facilities can use it to end PCC and also try to avoid long-term stewardship when there is waste in place.

LA, Will Steele – Agrees, but still can be used to determine more nuanced issues – like when to modify the GW monitoring.

MO, Rich Nussbaum – Regarding the FA assurance language MO used, it was from EPA model language. Others can access the language from the online permits (in the MO website).

LA, Will Steele – Will need omnibus authority

ORCR, Lilybeth – possibly we could state that the model is only to be used to modify requirements for monitoring etc, not ending PCC.

WV – The bottom line is that if there is hazardous waste in place, we do not release them from PCC.

ORCR, Lilybeth – would like to analyze specific situations.
- regarding general landfills where the waste is still hazardous and is in place, the data is showing that if there is waste in place that there is a potential for release eventually
- The models typically support keeping the facility in PCC.

4. Question on Availability of Newspaper (and radio) for Public Notice **Tab Sommer, ORCR**

Have states documented specific instances where newspaper (and radio) does not service areas near RCRA facilities with public notice obligations? We have heard, in general, that there is lack of availability in some communities (in addition to other issues with efficiency and effectiveness).
[HYPERLINK "mailto:Sommer.tab@epa.gov"]

ORCR, Tab - Request to send me examples where
1. newspaper is not available, and
2. state "bulletins" that are like newspapers where the agency posts notices.

5. Use of Video Cameras for Daily Inspections **Jalal El-Jayyousi, Missiouri**

A facility has expressed interest in the future to conduct daily inspections by video camera. They are considering using it for general daily inspections and leak detection. Would video cameras be an acceptable method for performing daily inspections at an operating facility?
[HYPERLINK "mailto:Jalal.El-Jayyousi@dnr.mo.gov"]

Missouri presented the above proposal, in the context of tanks.

Idaho noted that at Idaho National Laboratory (nuclear facility) the use of video monitoring is allowed, the primary reason is safety due to radioactive hazards. In the context of hazardous waste storage, might be OK with using videos to monitor for several days, then follow up with manned inspection, but probably not OK with complete reliance on video.

Region 4 asked about when videos were used, whether there are requirements for keeping the equipment in good working order? Concern being that you may need the video as evidence for whether or not there was a leak. Idaho responded that yes, when possible.

New Hampshire - have state permits for evaporators, wastewater treatment units, etc. State is considering allowing video surveillance, and have conditions that if using video for weekends, the video has to be of sufficient quality to determine whether there was a leak.

North Carolina – noted that when they have received permit applications discussing the possible use of something in the future, their response has been, via an NOD, to provide more detail, or condition that use to say that when the company is about to implement the activity or device that they submit detailed information to the state for approval before installing the device.

Another consideration relates to a video's ability to detect a leak – what about a case where organics leak but may not be clearly visible on a video, but a manned inspection could readily detect via odor. Raises the point that type of waste involved should be a consideration whether to allow video in lieu of manned inspection.