

INSIGHTS

EPA's "Next Generation" Enforcement Hitting Region 6 Facilities Now

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The U.S. Environmental Protection Agency's RCRA compliance sweep through Region 6 in the first half of 2015 captured a series of violators sharing the common problem of underreporting their hazardous waste volumes. Particularly noteworthy is the prevalence of companies working in the oilfield services industry, which as a whole may be unaccustomed to attention from EPA, especially on waste issues. Adding to the sting of federal enforcement is the seemingly relative ease with which the agency was able to prove up these costly hazardous waste violations.

Netting penalties ranging from just under \$100,000 to just over \$500,000, EPA's enforcement team cited companies in March and May 2015 for violating one of the basic requirements under RCRA: accurate reporting of hazardous waste quantities. In each of the matters, the companies had reported generating less than 100 kilograms per month of hazardous waste. In reality, as determined by EPA, each had generated over 1,000 kilograms per month.

Companies that generate hazardous waste in very small volumes are able to operate under significantly less strict RCRA requirements as "Conditionally Exempt Small Quantity Generators," or CESQGs. CESQGs are exempt from many of the core RCRA requirements, including time limits on accumulation, storage requirements, personnel training, contingency plan development and emergency procedures planning. CESQGs are also not required to manifest their waste shipments and are exempt from biennial reporting requirements – two significant components of the cradle-to-grave management system at the heart of the hazardous waste program. Without these documents, EPA - and its authorized state partners - could be severely hampered in their ability to oversee core technical protections and ensure the proper disposal of hazardous wastes.

In contrast, large quantity generators ("LQGs") accurately reporting hazardous waste quantities above 1,000 kilograms/month must adhere to the RCRA requirements noted above and closely report their shipments on manifests and in biennial reports. Taken together, the failure of these companies to both operate their facilities in accordance with the protective LQG standards for on-site activities and fully within the scope of the cradle-to-grave tracking system likely led EPA to seek these very large penalties. The agency's penalty policies make clear that it reserves its harshest judgment for those companies that show fundamental disregard not only for protection of the environment but also for the regulatory system itself.

Notably, most of these significant RCRA enforcement actions arose without the benefit of individual site inspections at the various respondent locations. EPA Region 6, as part of the agency's larger "Next Generation" enforcement initiative, has been using information and tools readily at their disposal to efficiently detect these unregistered large quantity generators without physical inspections. Through RCRA Section 3007 information requests issued to permitted hazardous waste disposal facilities over the past year or so, Region 6 has been able to identify generators that have shipped large quantities of hazardous waste for disposal. EPA then cross-checks that list of parties against its database of registered LQGs. Parties shipping large quantities of hazardous waste that are not registered as LQGs have then been receiving information requests of their own – followed soon thereafter by notices of violation and costly enforcement orders.

EPA's use of new tools to remotely detect problems with companies' RCRA recordkeeping and reporting underscores the importance of vigorous internal corporate compliance programs and periodic self-auditing to help ensure that gradual changes in operations do not lead facilities to drift out of compliance with standards like RCRA generator requirements. If you would like to discuss EPA's "Next Generation" enforcement initiative, your RCRA obligations, or mechanisms for helping to better assure compliance, we stand ready to assist.