



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

October 15, 2009

Ms. Lisa Lund, Director
Office of Compliance
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 2221A
Washington, DC 20460

Subject: Hazardous Waste and Air Emissions Compliance Data Release

Dear Ms. Lund:

Thank you for the opportunity to provide caveats or corrected data for 2008 prior to E.P.A.'s release of hazardous waste and air emissions data via the internet. Please accept this letter as the method Maine D.E.P. would like to use for providing members of the public who evaluate that information with the context they will need to understand its significance. We look forward to having this letter posted with that initial release of data.

Maine D.E.P. has included the following caveat on its website since the inception of E.P.A.'s Enforcement and Compliance History Online (ECHO) website:

“EPA's ECHO Database - State and Federal differences in vocabulary and policy will affect your understanding and ability to make fully informed decisions about the compliance and enforcement status reported by the United States Environmental Protection Agency's Enforcement and Compliance History Online (ECHO) Web site.

Maine, like all other states, uses specific and sometimes unique terminology to identify a regulated entity's compliance status and those enforcement actions taken as a result of noncompliance. Individuals obtaining compliance and enforcement information through the USEPA's ECHO Internet site must understand that Maine's terminology often varies from that used by the federal government. This difference in vocabulary may result in a false impression of inactivity, or inappropriately harsh activity, when reviewing a report created with ECHO.

An ECHO report may show that a facility has had violations during a particular time period and an enforcement action has not been taken. A significant limitation on the information available in that report is that many actions taken by Maine DEP, such as the issuance of an NOV or the proposal and ongoing negotiation of an ACA, are not recognized in ECHO-generated reports as enforcement actions. As a result, the data you receive in an ECHO report may appear to show violations remaining unaddressed, when actually the violations ended long ago and an enforcement case is actively being pursued to resolution.

As a result of the differences in vocabulary and policy on what constitutes an enforcement action you may need to contact Maine DEP's enforcement director. By contacting Maine DEP with your questions, you will obtain the most current information available about facilities reported by ECHO.”

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-6477 FAX: (207) 764-1507

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Letter to Ms. Lisa Lund
October 15, 2009
Page 2 of 3

The following comments are made with this in mind.

HAZARDOUS WASTE

Verification of data previewed to Maine D.E.P. could not readily be determined. While E.P.A. provided the data for certain categories, the names of the facilities or regulated entities associated with the data were not made available. As a result, Maine D.E.P. could not cross-check information to verify the data's accuracy or to identify discrepancies.

The actual numbers for compliance and enforcement activities initiated by Maine D.E.P.'s hazardous waste enforcement unit for federal FY2008 are as follows:

- 90 compliance evaluation inspections (CEIs) conducted at all facility types
- 5 Letters of Warning (LOWs) issued as a result of the 90 CEIs
- 68 Notices of Violation (NOVs) issued as a result of the 90 CEIs
- 5 "formal" enforcement actions, with penalties, initiated as a result of the 90 FFY2008 CEIs
- \$47,450 in penalties assessed for hazardous waste violations in formal enforcement actions as a result of the 90 CEIs performed in FFY2008;
- \$143,171 in penalties assessed for hazardous waste violations in formal enforcement actions during federal FY 2008 for cases initiated prior to FFY2008, including one criminal conviction.

By contrast, the ECHO data base, because of different data base requirements or definitions which appear to exclude some of the activities performed by Maine D.E.P., indicates the following activities:

- 45 CEIs at major or non-major facilities
- 33 NOVs or LOWs issued (so-called "informal" enforcement actions)
- 0 "formal" enforcement actions
- \$0 total penalties assessed

The ECHO database information may be correct for the universe it is intended to capture (*i.e.* major facilities and federally regulated entities). However, by comparing Maine D.E.P.'s actual numbers and the ECHO database numbers listed above, the ECHO database represents only a subset of the hazardous waste compliance and enforcement activities conducted by the State of Maine.

AIR EMISSIONS

Information provided via the ECHO database similarly does not accurately reflect Maine D.E.P.'s work related to maintaining compliance with state and federal clean air laws. For example, the information presented in the Data Release for FFY '08 shows that Maine performed Full Compliance Evaluations (FCEs) at only 50% of major facilities (thirty-five out of seventy) in a two year cycle. However, a companion document to the Data Release states: "States/locals, with regional approval, can develop alternative Compliance Monitoring Strategy plans. Such alternative plans can vary with respect to the universe of sources covered, the minimum frequencies, and/or the type of evaluation (*i.e.*, FCE, PCE or investigation)." Maine and EPA have agreed to an alternative schedule for ten of the seventy major facilities in Maine. These ten "mega-facilities" have a three year evaluation cycle because of their size and complexity. The three year cycle runs from 2007 to 2010 and should not be counted in the FFY '08 review. When

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Letter to Ms. Lisa Lund
October 15, 2009
Page 3 of 3

the mega-facilities are excluded, Maine records show that during the two year period covered in the data release, Maine performed FCEs at fifty-seven of the sixty major facilities providing an evaluation rate of 95%.

Furthermore, the federal database and entry protocols used to produce the data release are complex and Maine's data system is not consistent with it. This results in Maine's data quality appearing to be lower than the national average in a number of areas. But, when the details are examined, both data bases show that Maine compliance and enforcement staff maintain a regular presence at all significant emission sources as well as most minor sources.

Maine compliance and enforcement staff work closely with E.P.A. Region 1 staff to make sure that state clean air laws and the federal laws that we have jurisdiction over are administered robustly and consistently. Maine and E.P.A. staffs meet regularly throughout the year to review our compliance and enforcement efforts. Through these efforts we ensure that Maine facilities maintain compliance with the environmental protection laws and that the public resources are sufficiently protected.

Should there be questions regarding any of the Maine-related data available through E.P.A.'s ECHO website, I encourage individuals to contact Maine D.E.P.'s enforcement director for assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Littell", with a long horizontal flourish extending to the right.

David P. Littell
Commissioner

cc: Ira Leighton, Acting EPA RA