

## Notes

### NEWMOA Hazardous Waste Conference Calls December 11, 2018

#### **Topic: State Views on the Use by TSDFs of Generic Profiles of Waste Streams and the Results of VT's Recent TSDF Enforcement Case**

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**Participants:** CT DEEP (2 people); ME DEP (3 people); Mass DEP (8 people); NH DES (8 people); NJ DEP (9 people); NYS DEC (13 people); RI DEM (1 person); VT DEC (4 people); EPA Region 1 (1 person); EPA Region 2 (1 person); EPA HQs (1 person); NEWMOA (1 person)

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#### **Discussion of Use of Generic Waste Profiles by TSDFs**

Rhode Island: Very interested in understanding how other state programs address Safety Kleen's use of two generic profiles for parts washer wastes that include solvents. They categorize them as:

- Petroleum-based
- Aqueous parts washer waste

Connecticut: There are no Safety Kleen facilities operating in CT. The parts washer wastes include a blend of mineral spirits that may have high flash points. They use a shotgun approach to waste profiles. The waste data they have offered is not generator specific. They also manage anti-freeze waste, classified as D008 and Perc-waste. CT DEEP struggled with this issue, particularly when Safety Kleen (SK) wanted a permit to operate in the State. Connecticut asked them to conduct sampling. As a result, they reached an impasse with SK, and the Company

decided they could not do business in the State with the sampling requirements and walked away.

Vermont: DEC has not focused on parts washing solutions. There are problems with managing aqueous parts washer solution as non-hazardous and using an across the board generic profile. For petroleum parts washing fluids, VT DEC has a petroleum listing and waste code (VT02) for management as a hazardous waste (HW). Not sure how often the waste code is used. Sometimes DEC sees other waste codes assigned to this stream, including D039 (which is also used for Perc waste). Waste streams are managed overall pretty well for parts washing solutions.

New Jersey: Safety Kleen in Linden, NJ list petroleum-containing waste as D039, unless they find it is non-hazardous. That SK facility is required by DEP to do annual recharacterization of wastes. They do a statistical analysis from sampling across the U.S. The petroleum-based waste is no longer ignitable as the original product. They co-mingle waste streams, and they are then recycled together. For the sampling at the Linden facility, they are required to sample 10 percent of the shipments of petroleum-based waste with composite samples. DEP has not seen huge problems. The issue is the generator mixing waste streams, and it is not certain whether the D039 classification is correct. For the 10 percent sampling, not clear what the waste might be characteristic for. Parts washing solutions are recycled.

Rhode Island: The basic question is whether the generic waste profiles are a good practice. RI has approved a permit and asked for an annual evaluation for a certain percentage of the waste.

Vermont: The primary concern is possible management of hazardous waste as non-hazardous. There may be outliers that are comingled with generic waste and not caught because of how the waste is coded. Generally, a parts-washing solution that is in a closed-loop system is not a grave concern.

New Jersey: 10 percent of the shipments are analyzed, and they test for:

- PCBs
- Volatiles
- Ph
- Flash point
- Questionable physical appearance (i.e., sheen on the surface)

Generators use the code D039, unless they show that it does not meet that waste code's criteria. SK is picking up the waste as D039 and mix it together with other streams and put into distillation. The still bottoms go to fuel blending for use as fuel by cement kilns. The generator could have used additives, but that is not part of the determination.

They have been using this approach for a while, but it's not perfect. They have not found huge problems. Not sure how to change.

New Hampshire: Is SK's facility in Linden, NJ permitted to take dry cleaner waste or just parts washer waste?

New Jersey: They are not taking dry cleaner waste under the conditions of their permit.

New Hampshire: There is generator in the State that reported that they are using an uncommon waste code because of the results of some sampling by a receiving facility in another location. This raised a flag for the inspectors.

Vermont: Are states requiring generator sampling? Generators make an effort to use inherent waste code. It may advantage them to do some sampling.

New York: Concerned about waste from naphtha-based dry cleaning. SK combines this stream with others waste streams. NY is forcing them to do some sampling. These wastes are generated in significant quantities in NY. Sampling could be an advantage for them in terms of demonstrating that some wastes are non-hazardous.

### **Vermont's Enforcement Case Against Safety Kleen**

Almost all of the recent SK enforcement case is resolved; the attorneys are arguing over the final language in the agreement. The SK-permitted HW facility functions mostly as a transfer station. They are permitted to handle their core HW waste streams and manage other waste streams on a transfer basis (which is not subject to their permit). DEC's concern in the case is waste referred to as vacuum waste. This waste is traditionally managed as non-hazardous. It is described as an aqueous waste stream that is generated by vacuum sumps and floor drains. DEC did an inspection and reviewed retained samples of the vacuum waste. Different samples had different appearances, including a variety of colors, viscosity, and phases – they were all over the place on these characteristics. DEC was concerned that this observation did not mesh with their understanding of vacuum waste. SK used two profiles for the vacuum waste they accepted:

- Business – automotive wastes
- Non-automotive/industrial customers

DEC's review of the profile found that the automotive category was a generic one-size-fits-all profile and included what one would expect. DEC has not yet pursued whether the actual waste falls within this description.

In the enforcement case, DEC focused on the waste from SK's industrial customers because those seemed to be the most variable in the retained samples. They found that for the non-automotive customers, SK collects pre-qualification samples of the waste stream. DEC asked for these samples and found that a certain percentage (approximately two out of seven or eight) were hazardous for lead and/or chrome.

DEC had gotten a call about a year ago from SK about a shipment of vacuum waste to a facility in Pennsylvania, which rejected the waste because the Ph was around 12.65. SK shipped the waste under a manifest with a D002 code to a Clean Harbors facility in Connecticut. DEC asked for testing results for the waste and has received nothing. DEC wanted the acceptance test results for the shipment of the waste from Barre, VT to the facility in Pennsylvania. There were 10-12 shipments of the waste, and they found that a high percentage (possibly about six) had Ph levels over 10 and of those four where over 11.

Vacuum waste is accepted in a vacuum truck, and SK goes from one customer to another and blends the waste. The source of their industrial customers waste are tanks, drums, floor drains,

and sump pumps. SK dilutes the waste and co-mingles it. They return to the Barre facility and pump the waste onsite into a 30,000-40,000-gallon tank. They ship this large tank to Environmental Recovery Corporation in Pennsylvania, and they have found that the waste still has a Ph over 10. ERC flagged the high Ph shipment. Originally, the waste material was going to Tradebe. DEC asked for incoming screening data from Tradebe. SK switched from Tradebe to ERC in PA. Before shipping to ERC, SK required no sampling for this waste stream, which was supposedly non-hazardous. This was the basis of the case against them.

During the case, they pushed back a little but not much. At the enforcement meeting, DEC laid out the violations, and SK agreed to settle with the Attorney General's office. There were a bunch of violations in the case, including failure to properly characterize the wastes, shipments without a manifest, storage in an unpermitted unit, and land disposal restrictions (LDR) problems. The penalty was about \$70,000. They are in the process of finalizing the language in the enforcement order. Overall, DEC's concerns were not focused on SK's core waste streams but wastes, like the vacuum waste, that fly under the radar and are managed as non-hazardous waste.

SK's permit is up for renewal, and it has been a long process. DEC will require comprehensive waste analysis plans (WAP), which will require commercial facilities to sample all waste they are accepting in the future. They will include a rigorous waste sampling protocol to justify any vacuum waste classified as non-hazardous. Prequalification for pre-acceptance will be addressed in the revised WAP. The existing WAP for SK only addressed core waste streams and uses the national waste characterization process. As SK gets new customers, they will have to conduct an initial waste characterization analysis.

What were the results of the pre-qualification samples taken at the generators? High Ph in the load shipped from Barre. About 20 percent of the pre-qualification samples retained from individual customers exceeded at least one characteristic for hazardous waste. They have copies of the pre-qualification results, including the testing parameters, but some of the detection limits were more than the regulatory levels so there was no way to tell if they triggered the regulatory limits. SK relied on old information for a long period of time and assumed that the generators would inform them if they made changes. There was no indication of the high Ph levels in the samples. This case shows that the WAPs need to include an annual reupping of the waste profiles, and they need to be beefier.

Who did the analyses? SK did a lot of the waste testing in-house, but they also used a third party for some of it. SK labs found exceedances that were not recognized. DEC's new WAP will require SK to use a third-party lab for testing.

The overall main theme of this case was the importance of looking at non-hazardous waste streams and making sure to include state waste codes. In VT, these include petroleum waste, ethylene glycol (aka antifreeze), and vacuum wastes. Other VT facilities manage a lot of other non-hazardous waste. It is important that those types of waste be included in evaluations at the facility.

VT's ENPRO TSDf inspection found that 22 percent of the waste that went through a rigorous testing of every 500 drums flunked the analysis. If wastes are being mis-identified, then the RCRA system is failing.

Nation-wide the procedures for managing vacuum waste at SK facilities needs to be reviewed. The category of vacuum waste includes a lot of wastes that are varied. The sources are sump pumps and floor drains, process waste from containers and tanks, and drums of waste. The aqueous phase waste is generally managed as non-hazardous but falls into a variety of categories.

New York: SK in NY does not have a profile for vacuum waste by itself; need to ask how much of this waste is managed.

Vermont: Some profiles are labeled used oil. Need to address through rule-making. There are loop-holes in the regulations, which focus on solid media. There is nothing that addresses aqueous solutions. What can facilities legitimately call used oil? Pre-qualification results may find that 99 percent is water and one percent is organic. Does not pass the straight face test in VT. Organics can exceed the TCLP for lead and chromium.

DEC is looking to include provisions in its regulations to require aqueous waste streams, including used oil mixtures above a certain percentage (need to figure out what that level is) in HW determinations. How can the used oil be separated from the aqueous phase? SK in Barre has a tank system for used oil, and they try to derive oil from the oil changes. They maintain the vacuum waste is used oil, but it is not.

VT's timeframe for its rulemaking is uncertain. They are drafting regulations to address all of the various federal requirements, including the Generator Improvement Rule and the pharmaceutical waste rule.

### **EPA Headquarters Update**

EPA is focused on improving implementation of LDRs and assessing the parameters in WAPs for about 50-60 TSDfS. They are looking for common areas and possible gaps. Some of the WAPs are more comprehensive than others. They are working on a briefing on their observations, covering sampling frequency, composite or grab samples, and the tiered approach. Requiring sampling one time per year makes sense for the 1,000s of tons of waste that is being managed. They will be looking at options for improvements and issues that need to be addressed. They plan to share with results with the states and regions. They will also brief the HQs office directors on their findings and possible next steps. The springboard for this effort was work conducted by the National Enforcement Investigations Center (NEIC) on sampling on stabilization waste where they found about a 30 percent failure rate. They are willing to share their results and recommendations with NEWMOA. Jeff Gaines and Elaine Eby – [eby.elaine@epa.gov](mailto:eby.elaine@epa.gov) is working on this effort, and they hope to be able to share their findings in the spring.

### **Interim Air Bag Final Rule Comments**

EPA has issued an interim final rule for air bag waste management. Comments are due by January 29. NY is working on suggestions for improvements. They are willing to share their

comments. They generally support the rule but want to offer some ideas to strengthen it. Vermont is also reviewing the rule. The ASTSWMO Compliance Monitoring and Enforcement Task Force is reaching out to members to see about interest in submitting comments.

### **Next Steps**

- VT DEC will share its final enforcement document when it is available
- EPA HQs will share their findings of their review of the WAPs and is willing to brief NEWMOA on their results
- NY and other states will share their comments on the air bag rule
- NEWMOA will explore whether there is interest in developing comments on the air bag rule