

NEWMOA Hazardous Waste Conference Call February 14, 2017

Topic: Roundtable on the RCRA Issues with Retail Facilities

Disclaimer: NEWMOA organizes regular conference calls or webinars so its members, EPA Headquarters, and EPA Regions 1 and 2 can share information and discuss issues associated with the implementation of the Resource Conservation and Recovery Act (RCRA), compliance assistance, enforcement, and other topics. Members of the group prepare draft notes of the calls for use by those members that were unable to participate and for future reference by the participants. These notes are intended to capture general information and comments provided by the participants and are not a transcript of the call. NEWMOA provides the participants on the calls with an opportunity to review drafts of the notes prior to posting them on the members' only area of the hazardous waste page on the NEWMOA website. NEWMOA staff makes all recommended corrections to the notes prior to posting.

Any comments expressed by participants should not be considered legal opinions or official EPA or State positions on a particular rule, site-specific matter, or any other matters. Participants' comments do not constitute official agency decisions and are not binding on EPA or the States. For exact interpretations of a State's or EPA's RCRA regulations, rules, and policies, NEWMOA recommends that readers of these notes contact the appropriate hazardous waste program in the State's environmental agency or EPA Headquarters or EPA Regional RCRA staff.

Participants: CT DEEP (6 people); ME DEP (1 person); Mass DEP (1 people); NH DES (8 people); NJ DEP (3 people); NYS DEC (7 people); VT DEC (3 people); EPA HQ (2 people); EPA Region 1 (4 people); EPA Region 2 (1 person); NEWMOA (1 person)

Call leader: NEWMOA

Note-taker: NYS DEC

The call provided a roundtable discussion on the RCRA issues that state programs are facing with retail facilities – interpretations, plastic baggies as containers, aerosol cans, reverse distribution logistics, waste determinations, estimating waste generation, others; outreach and education that programs are conducting for retailers.

Drew Lausch, EPA Headquarters (HQs) provided background on EPA's retail strategy initiatives, including their site visits to stores and reverse logistics centers. EPA's retail strategy is available at – www.epa.gov/hwgenerators/strategy-addressing-retail-sector-under-resource-conservation-and-recovery-acts. See flow chart on the EPA website – www.epa.gov/sites/production/files/2016-09/documents/retail_strategy_flowchart_508.pdf.

The Agency has three initiatives underway:

1) Proposed rulemaking: add aerosol cans as Universal Waste (CA and CO do this already); kick-off meeting last week; also, guidance document on aerosol cans. Goal is to promote recycling.

2) Developing a policy on reverse distribution in the retail sector: unsaleable items moved backwards to reverse distributors/reverse logistics;

Issues:

- CA is doing a lot on this; found violations like items that are already leaking mixed in with other items that are being moved through the reverse distribution process.
- EPA's CAFO with Wal-Mart;
- Question that is being wrestled with and is a real challenge: where's the point of generation?
- Do you know if it will be a waste or maybe reused/resold?
- A lot of this stuff finds a home on secondary or tertiary markets, but don't necessarily know at the store.
- The issue is very complex; there are a lot of agreements between retailers, manufacturers and reverse distributors.
- A good proportion of items that go through reverse distribution are called "recycled" by retailers or reverse distributors, but the items are classified as "returned to vendor." EPA doesn't know whether to agree or not, because don't know what happens then. So, reverse distributors call it recycling, but they don't know what the vendor does after they receive the items.
- Retailers send their items to either reverse distribution centers that they own or to reverse distributors that are owned by other parties. In EPA's experience, it's rare that retailers own facilities that solely operate as reverse distributors. It's more common that retailers either devote a small portion of their forward distribution facilities to reverse logistics activities or go through reverse distribution facilities that are owned by other parties.
- "Kill codes" (99 percenters): some manufacturers won't allow their products to be sold on a secondary market so it will be treated or disposed, or possibly reformulated instead.

3) Pharmaceuticals rulemaking

Q&A with Drew, EPA HQs

Q – When does California identify the stuff as a waste?

A – seems to be two viewpoints, reverse logistics (RL) are a business practice facilitating reuse/recycle plus other non-waste functions vs receive stuff that will eventually be hazardous waste (HW). Cases have resulted in controls – especially for places where they know everything will be waste.

Q – How much of the returns were to company return centers vs those that receive from many customers? In the second case, how knowledgeable are the RLs?

A – Reverse logistics facilities won't take items without written agreements, conditions (including branding issues). Often up to the reverse logistic facilities to consolidate and find a "home" for the items – typically handle through donation or liquidation; credit model is complicated. Systems in place, some use WERCS, some use other systems or specialty people to determine the disposition. Walmart is unique in being so big that they have their own – the

center(s) only to reverse distribution (RD), not forward distribution. Most of the others use other reverse logistic facilities.

Q – Does Target have their own RD?

NYS DEC – Yes, in DEC Region 5.

Drew – Some forward distribution centers have small reverse distribution (RD) that is a percentage of the forward distribution operation, but not the primary business of those facilities.

NYS DEC - DEC Region 4 and 5 co-inspected the Walmart Distribution Facility in Johnstown, they have some RD at their forward distribution center.

Drew – this shows the complexity of the problem.

CT DEEP – one of the problems they've seen is retail stores contracted to 3rd parties. On-site personnel don't have a good idea of the HW determination process; employees follow whatever the scanning gun shows. CT requires annual updates and documentation of HW identification, but retailers don't have that information on-site, instead it's available from 3D or WERCS. Items handled at the customer service desk are sent to their return or vendor area in the back of the store, where the waste determination is made. So, they essentially have two areas: the front and the back of the store. The front serves as a satellite area, and the back serves as the 90-day storage area.

Low density polyurethane (LDPE) bags as containers is problem. If an item leaks, employees add absorbent, double bag it, and put it in a plastic bin in the back. LDPE bags have compatibility issues – acetone, MEK, benzene. This also raises the question about what is the actual container? Is it the product package, the inner plastic bag, or the outer plastic bin? This creates a labeling issue. The label may be on the original packaging, and not visible from inside the closed container. Target is going to be doing a compatibility study with LDPE bags.

Retailers use very generic terms for the bins at the back of the stores – “flammables, aerosols and toxics.” This leads to the potential for incompatibles in the same bin. Inspections – employees bag the items and put them in a plastic-lined cardboard box (regardless of incompatibility) but only inspect the outer, closed, and sealed box.

Target does not want their people to sign the manifest, so Stericycle signs the manifest, but the person signing the manifest needs to be able to certify waste minimization statement. Target also had trouble even finding the manifests – disconnect between documentation and its ability to be located. Corporate-based training centers issues – the provided training don't always reflect state specific standards. Seasonal items.

NYS DEC Region 4 commented that – everything CT has seen they have seen too; compliance issues are challenging at the store level. Personnel turnover and different shifts creates a continuity issue.

NYS DEC Region 5 – square peg/round hole issues; corporate determined to make it fit.

NYS DEC Region 1 – Target was scanning items in the front of the store to determine what to do with the item. Therefore, NYS DEC identified that activity as the employee making a waste determination.

CVS inside of Target – 1 or 2 EPA ID#? CT requires them to have separate EPA ID#'s; NH also.

ME DEP – seeing the same thing. 2 containers for retail waste, cardboard boxes with plastic liner, items in plastic zip lock bags. Used 3D. 1 EPA ID# for store and pharmacy, Stericycle for pharmacy. They hoped word would get around when they inspected, but not so far. ME considers if a pharmaceutical is not expired yet can go for RD; if expired, a HW and must be managed as such.

MA DEP – inspections of color-coded bins; other issues like waste oil and not using the correct ID number on manifests. Have inspected pharmacies in the past but did not tackle RD issue; no retail outreach; have hazardous waste fact sheets, etc.

NH DES – 3rd year of LQG/retail pharmacy flex project with EPA Region 1 and some states. Costco, Rite-Aid, CVS primarily targeted because they were LQGs for pharmaceuticals. There was significant outreach from EPA, no significant enforcement. NH hasn't specifically targeted the big-box stores that weren't pharmacy-directed for inspections. Target/CVS inspection – scanning gun prints a label that tells them which bin to put it in. Satellite area; when bin filled, put on a shelf, take down to inspect. Didn't do annual training for CVS pharmacists but they had just taken it over (Target provided training for their pharmacists, but hadn't switched over since transition had just taken place). Same issue of person you talked to on inspection isn't there, you pretty much end up talking with consultant afterwards. Where determination made, and whether they just have satellite area or also have 90-day storage area. A lot of communication with corporate and very little with the store personnel. Can cause a disconnect, including on the store's policy of making HW determination. NH has mandatory training for SQGs and LQGs, run classes 4 times/year for retail specific training; bags not acceptable for storage of incompatibles; using scanning guns may not be adequate HW determination; shared floor space – they need to keep in mind they are two facilities; disconnect between corporate and store personnel – something needs to be done to bridge the gap.

NJ DEP – Started inspecting a long time ago; pharmaceutical facilities are also regulated medical facilities in NJ; 2 ID numbers for Target/CVS; a lot of experience and enforcement cases.

NYS DEC Region 3 – retailer inspections started around 2002-2003 with home improvement stores; they can come into compliance statewide within a pretty short time-frame, 6 months or less. Who gets the manifest – corporate vs stores – store signs the manifest, but the return copy goes to corporate unless we ask for it, so there's a disconnect there. Great success with getting change from enforcement but seems to be initialized by doing several inspections of different locations belonging to the same retailer in the same geographic area. When you do inspections that are not focused on a single retailer, you're less likely to get compliance across the state from any of the retailers. NYS DEC Region 4 – agrees, a lot of success with home improvement, but pharmacies still an issue; waiting on a policy being developed in NYS DEC central office; a lot of the home improvement stores connected electronically; NYS DEC Region 3 – cosmetic

companies handle their own counters separately in some stores – who handles the waste? Materials going to a secondary location – nail polish shouldn't go out to dollar store or flea market, so it is a HW at point of generation. NYS DEC Central Office is working on a policy with the solid waste program.

VT DEC – only a few big box stores, but have inspected some retail pharmacies. Rely heavily on scanning guns. Disconnect on manifests. Corporate not necessarily up-to-date with VT rules, such as requirement for daily inspections. Outreach – aerosol cans, fact sheets (general, VT does not have many of these stores).

Kristin, EPA HQs – Costco trying to push the notion that returns to their stores are household hazardous waste. Anyone hearing this claim? CT – just came across this recently, and they are going to ask corporate in writing, and CT does not agree with that. WA is talking to Costco about this. NH – mini-blinds issue. Most states would not allow Costco to make that claim. NJ will send some information to the group about enforcement actions that they've taken. NY – EPA should look at similar violations at national companies. Some national companies get violations in other states but don't follow through in other ways necessarily. EPA is looking at this – information exchange and communication within companies.

Drew, EPA HQs – Costco in CA has a generous return policy they want to keep; they brought up the mini-blind memo and want to use household hazardous waste (HHW) exclusion. Returns that can be resold; and stuff on shelf that isn't sold – how do you figure out which is which, subdivide. So how do you call it HHW if you are going to put it back on the shelf? (Mini-blinds policy was due to a specific recommended/voluntary recall).