

Notes

NEWMOA Hazardous Waste Conference Call

February 11, 2020

Topic: Experience with landlord versus tenant responsibility for hazardous waste, especially when it is abandoned by a tenant that leaves the property

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Participants: CT DEEP (7 people); ME DEP (2 people); Mass DEP (2 people); NH DES (7 people); NJ DEP (11 people); NYS DEC (22 people); VT DEC (2 people); EPA Region 1 (1 person); EPA Headquarters (4 people); NEWMOA (1 person)

Call leader: Maine DEP

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State Comments

Maine

1. **How do you determine responsibility when you can't find an owner, for example the owner may have died or moved to a different state with no forwarding information? Or if the landlord is uncooperative but the tenant is working with you? How do you get all of the stakeholders to the table?**
 - Maine DEP will determine responsibility from reviewing generator closure documents, generator notifications on RCRAInfo, past inspection reports and licensing information within ME DEP's system, Secretary of State, and the general internet/Google search.

- If the owner is uncooperative, DEP will work with the site owner to get the operator to the table.
2. **How do you access a site when the owner is uncooperative?**
 - If there is no access, DEP can try to get assistance from other groups within DEP and continue to communicate with the tenant/owner until allowed access.
 3. **How do you assign responsibility when multiple operators have been on the site over time?**
 - DEP looks at the most recent generator.
 4. **When is it necessary to go to enforcement because the parties are uncooperative, do you have a legal authority that defines the responsibly party?**
 - DEP is unsure of the legal authority. Could inform Attorney General's office.
 5. **If an operator doesn't have the resources for cleaning up a site, what resources are available for assistance?**
 - DEP tries to work with the most recent generator or site owner for clean-up. Maine has a voluntary response program where new owners (who did not generate the waste in question) will perform clean-up in some cases. There is no state money or resources available.
 6. **How do you keep track of those sites that are known to need remediation or closure? How do you keep communications open when things have stalled?**
 - DEP keeps a manual list with contact information for sites that may need remediation or closure. Overtime, DEP evaluates progress for these sites.
 7. **For those states that have adopted the Generator Improvement Rules, are you finding a lot of OOB generators now that notifications are required more often?**
 - N/A, Maine has not adopted the Generator Improvement Rule.

Massachusetts

1. **How do you determine responsibility when you can't find an owner, for example the owner may have died or moved to a different state with no forwarding information? Or if the landlord is uncooperative but the tenant is working with you? How do you get all of the stakeholders to the table?**
 - Massachusetts DEP will look for the most recent generator or property owner.
2. **How do you access a site when the owner is uncooperative?**

- DEP has authority under hazardous waste statutes. They can also invoke right to a search warrant.
3. **How do you assign responsibility when multiple operators have been on the site over time?**
 - DEP looks at the most recent (or previous) generator.
 4. **When is it necessary to go to enforcement because the parties are uncooperative, do you have a legal authority that defines the responsibly party?**
 - Yes, DEP uses the authority under MA state laws for all enforcement.
 5. **If an operator doesn't have the resources for cleaning up a site, what resources are available for assistance?**
 - Massachusetts has a state waste site clean-up program. If the state program cannot be utilized, a state contractor can be used to remove any hazardous waste. EPA clean-up is last resort.
 6. **How do you keep track of those sites that are known to need remediation or closure? How do you keep communications open when things have stalled?**
 - Mass DEP does not keep a running list for businesses needing remediation/closure. The waste-site clean-up program may have a list.
 7. **For those states that have adopted the Generator Improvement Rules, are you finding a lot of OOB generators now that notifications are required more often?**
 - N/A, Massachusetts has not adopted the Generator Improvement Rule.

Connecticut

1. **How do you determine responsibility when you can't find an owner, for example the owner may have died or moved to a different state with no forwarding information? Or if the landlord is uncooperative but the tenant is working with you? How do you get all of the stakeholders to the table?**
 - Connecticut DEEP's interpretation of "as generated" waste causes both the landlord and tenant to be co-generators. Typically, DEEP would look to the tenant who operated the property first and if that didn't work, then look to the owner. Inspectors will use any resource available to track down owners/tenants (Dave's example: Chem-Tech).
2. **How do you access a site when the owner is uncooperative?**

- In the case of a good-faith company, inspectors will typically schedule return visits, but only if a walk-through is provided the same day as the initial site visit. In the case of a complaint or other generator, DEEP will explain the statutory authorization and inform the company that a search warrant can be obtained for access if still uncooperative.
- 3. **How do you assign responsibility when multiple operators have been on the site over time?**
 - This is similar to the answer on question #1. Connecticut would go after the property owner as final relief.
- 4. **When is it necessary to go to enforcement because the parties are uncooperative, do you have a legal authority that defines the responsibly party?**
 - Connecticut would enforce generator requirements against one or both the landlord and tenant.
- 5. **If an operator doesn't have the resources for cleaning up a site, what resources are available for assistance?**
 - Connecticut can utilize federal spill funds (limited- via CERCLA)
 - DEEP has state spill clean-up funds and a state superfund.
 - DEEP can also mandate clean-up through state enforcement actions. Connecticut has a Property Transfer Act through our Remediation Division that: "requires the disclosure of environmental conditions when certain real properties and/or businesses ("establishments") are transferred. When an establishment is transferred, one of eight Property Transfer Forms must be executed, and a copy of the form must be filed with the Department of Energy and Environmental Protection. When transferring an establishment where there has been a release of a hazardous waste or a hazardous substance, the parties negotiate who will sign the Property Transfer Form as the Certifying Party to investigate the parcel and remediate pollution caused by any release of a hazardous waste or hazardous substance from the establishment."
- 6. **How do you keep track of those sites that are known to need remediation or closure? How do you keep communications open when things have stalled?**
 - DEEP's Remediation Division maintains a case management database. DEEP also utilizes RCRAInfo.
- 7. **For those states that have adopted the Generator Improvement Rules, are you finding a lot of OOB generators now that notifications are required more often?**
 - N/A, Connecticut has not adopted the Generator Improvement Rule.

New Hampshire

- 1. How do you determine responsibility when you can't find an owner, for example the owner may have died or moved to a different state with no forwarding information? Or if the landlord is uncooperative but the tenant is working with you? How do you get all of the stakeholders to the table?**
 - DES looks at the most recent notification and may also check with the city/town where the business is located. First, they would look to the tenant for responsibility, then the property owner.
- 2. How do you access a site when the owner is uncooperative?**
 - DES could issue an enforcement action to both the tenant and property owner. Since administrative orders get attached to the deed of the property, that tends to convince people. DES is also able to use statutory authority or acquire a search warrant.
- 3. How do you assign responsibility when multiple operators have been on the site over time?**
 - DES would look at the most recent generator.
- 4. When is it necessary to go to enforcement because the parties are uncooperative, do you have a legal authority that defines the responsibly party?**
 - DES has statutory authority under state regulations.
- 5. If an operator doesn't have the resources for cleaning up a site, what resources are available for assistance?**
 - DES will try to work with the individual, but if they are unable to clean-up the site the responsibility goes to the property owner. If the property owner cannot pay, the town can take the property, and then use Brownfield Program money for clean-up. DES does not have a lot of state funding, so a last resort would be using EPA for removal.
- 6. How do you keep track of those sites that are known to need remediation or closure? How do you keep communications open when things have stalled?**
 - DES' remediation program maintains a database.
- 7. For those states that have adopted the Generator Improvement Rules, are you finding a lot of OOB generators now that notifications are required more often?**
 - DES enforces a self-certification program for small quantity generators that requires annual notification.

New Jersey

- 1. How do you determine responsibility when you can't find an owner, for example the owner may have died or moved to a different state with no forwarding information? Or if the landlord is uncooperative but the tenant is working with you? How do you get all of the stakeholders to the table?**
 - NJDEP has access to Thompson Reuter's CLEAR Investigative software (fee based), they very successful in tracking down responsible parties with this software.
- 2. How do you access a site when the owner is uncooperative?**
 - Several ways, reach out to other state or local authorities depending hazard, administrative search warrants.
- 3. How do you assign responsibility when multiple operators have been on the site over time?**
 - Research what companies have generated what type of wastes and pursue a property owner, when an actual responsible party cannot be identified.
- 4. When it is necessary to go to enforcement because the parties are uncooperative, do you have a legal authority that defines the responsible party?**
 - RCRA strict liability for Hazardous Waste and State strict liability for solid waste.
- 5. If an operator doesn't have the resources for cleaning up a site, what resources are available for assistance?**
 - Small cleanups would be done by State, larger scale removal actions would be referred to U.S. EPA in addition to initiating enforcement actions against the responsible party(s).
- 6. How do you keep track of those sites that are known to need remediation or closure? How do you keep communications open when things have stalled?**
 - Tracking is done in NJEMS. Lines of communication remain open with enforcement actions when responsible parties do not take responsibility for their actions.
- 7. For those states that have adopted the Generator Improvement Rules, are you finding a lot of OOB generators now that notifications are required more often?**
 - Closure notifications under the GIR are when companies are compliant and provide prior notification of a closure activity. Unless DEP stumbles across the site or are notified via another agency that a LQG has closed, they then

visit to determine compliance with closure requirements. DEP does not receive notifications from businesses that are no longer operational.

New York

- 1. How do you determine responsibility when you can't find an owner, for example the owner may have died or moved to a different state with no forwarding information? Or if the landlord is uncooperative but the tenant is working with you? How do you get all of the stakeholders to the table?**
 - DEC uses whatever entity is necessary for future clean-up, similar to the other states. Sometimes they are able to convince new owners.
- 2. How do you access a site when the owner is uncooperative?**
 - If the owner is uncooperative, DEC utilizes the rights of access, explain the ramifications to denying access, can contact Attorney General's office, Central Council Office, use agency law enforcement, or acquire administrative and criminal warrants.
- 3. How do you assign responsibility when multiple operators have been on the site over time?**
 - Unclear response.
- 4. When it is necessary to go to enforcement because the parties are uncooperative, do you have a legal authority that defines the responsible party?**
 - Follow same authority as described by CT DEEP. If the waste is hazardous, they are subject to joint and several liability. If abandoned, DEC can enter the site through the remediation program to get on the property.
- 5. If an operator doesn't have the resources for cleaning up a site, what resources are available for assistance?**
 - DEC has limited ability for drum removal, otherwise they would use EPA.
- 6. How do you keep track of those sites that are known to need remediation or closure? How do you keep communications open when things have stalled?**
 - DEC looks at closure requirements and other notifications. DEC will work with generators if things are stalled.
- 7. For those states that have adopted the Generator Improvement Rules, are you finding a lot of OOB generators now that notifications are required more often?**
 - N/A, New York has not adopted the Generator Improvement Rule.

Vermont

- 1. How do you determine responsibility when you can't find an owner, for example the owner may have died or moved to a different state with no forwarding information? Or if the landlord is uncooperative but the tenant is working with you? How do you get all of the stakeholders to the table?**
 - Vermont DEC Waste Management statutes say that one or both are liable (tenant/property owner). The person at the time of the release would be held liable.
- 2. How do you access a site when the owner is uncooperative?**
 - DEC will try to speak with the owner first, then if necessary, bring an environmental enforcement officer or get an access order from a judge.
- 3. How do you assign responsibility when multiple operators have been on the site over time?**
 - Responsibility would rely with the current owner or the most recent generator.
- 4. When it is necessary to go to enforcement because the parties are uncooperative, do you have a legal authority that defines the responsible party?**
 - Refer back to Vermont statutes. The responsibility would fall to the most recent owner/operator.
- 5. If an operator doesn't have the resources for cleaning up a site, what resources are available for assistance?**
 - Vermont has an environmental contingency fund that comes from taxes associated with hazardous waste.
- 6. How do you keep track of those sites that are known to need remediation or closure? How do you keep communications open when things have stalled?**
 - Vermont keeps a separate spill database. If things are stalling, DEC will incorporate the Attorney General's office.
- 7. For those states that have adopted the Generator Improvement Rules, are you finding a lot of OOB generators now that notifications are required more often?**
 - N/A, Vermont has not adopted the Generator Improvement Rule.