

## **NEWMOA Hazardous Waste Conference Call January 14, 2014**

### **Topic: Regulatory Issues with Evaporators**

#### **Disclaimer**

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**Participants:** CT DEEP (10 people); ME DEP (2 people); Mass DEP (12 people); NH DES (10 people); NJ DEP (4 people); NYS DEC (16 people); RI DEM (2 people); VT DEC (3 people); EPA Region 1 (5 people); EPA Region 2 (1 person); NEWMOA (1 person)

The call was led by Steve Simoes, VT DEC.

#### Background from Vermont

- Previous related NEWMOA calls on RCRA/Clean Water Act (CWA) interface held in November 2008 and on Dry Cleaner Separator Water held in January 2013.
- EPA Region 1 issued a memo on August 3, 2009 that sets out a more stringent approach than EPA Headquarter (HQs) (which exempts most evaporators under the CWA) and encourages EPA Region 1 states to regulate evaporators more stringently by covering all evaporators under RCRA requirements, either by full RCRA permit or under federal requirements for generator treatment in tanks.
- Vermont adopted rules in March 2013 under their "generator treatment in containers and tanks" permitting an exemption to regulate evaporators more stringently than EPA HQs.

- Vermont provided three links to their rules prior to the conference call that cover “wastewater evaporation unit,” prohibition of evaporation of hazardous waste, and “generator treatment in containers and tanks” permitting exemption.
- Vermont does not consider “evaporation” to be “thermal treatment.” Evaporators need to be in compliance with air standards and to not use extreme heat/pressure.
- Vacuum distillation, spray mister, and systems that use packed columns where the water runs down and the solvents are stripped are considered to be evaporators

NEWMOA’s Hazardous Waste Steering Committee plans to draft a letter to EPA HQs to comment on their position on the CWA exemption for evaporators.

### Connecticut

- Has issued multi-bureau policy guidance.
- Policy discusses several different scenarios, including regular (non-exempt) evaporators, evaporators that qualify as wastewater treatment unit exemption and evaporators that qualify for the totally-enclosed treatment facility exemption.
- If part of an active Wastewater Treatment System, regulated under Wastewater Program and exempt from RCRA.
- Hazardous waste determination always needs to be done on wastewater prior to evaporation. Generators must submit certifications that the waste they are evaporating is non-hazardous.
- Do not allow evaporators to evaporate wastewater that is hazardous waste without a permit (except for those that are exempt as WWTUs or TETFs). If the system produces hazardous waste, must be managed as hazardous waste.
- Certain units can comply with treatment in tanks and containers and can be exempt, especially if they are evaporating water for reuse.
- Vacuum distillation is considered to be a different kind of evaporator and is subject to the policy.
- Wastewater staff does not issue zero discharge permits.
- In process of amending regulations to codify the policy; tied into wastewater treatment exemption and treatment in containers and tanks policy.

### Maine

- Evaporation of hazardous waste is prohibited.
- Evaporators are permitted under an abbreviated permit that can be issued under the generator treatment in tanks/containers provision to allow for the evaporation and volume reduction.
- Need to show that no hazardous waste constituents are discharged to the air (bench scale to show no hazardous waste into the air through that process).

### Massachusetts

- In process of reevaluating their approach as EPA HQs position only applies to sites that have a Clean Water Act discharge permit, which applies to about half of the generators that have evaporators.

- Developing a generic waiver process for those sites that do not have a CWA discharge to be able to evaporate; generators must meet certain requirements to operate an evaporator.
- Getting input from Mass DEP regions and EPA Region 1 on the waiver form.
- Does not allow generator treatment in tanks/containers; must be hard piped; the waiver application process is being developed to address evaporators.

#### New Hampshire

- Currently issues Limited Permits for evaporators. On paper, their rules indicate that the evaporator has to meet the definition of a wastewater treatment unit (WWTU), but in practice DES has been issuing Limited Permits for all evaporators, including those that do not meet the definition of a WWTU. They have permit requirements in place to ensure that no hazardous constituents are released.
- Facilities must submit documentation of compliance with air standards.
- NH drafted rules that would bring them in line with EPA Region 1's 2009 Memo but have since been told that EPA HQs disagrees with Region 1's interpretation. They are waiting for their in-house attorneys to make a decision about how they will proceed.
- There are 11 facilities in NH that use evaporators that do not meet the definition of a WWTU. If they decide to follow the HQs interpretation, those facilities will either need to get "zero discharge" permits from their local POTWs (if they have a sewer connection) or apply for a Standard Permit (TSDf permit).

They are continuing to issue Limited Permits for all evaporators that meet their requirements, even if the evaporator does not meet the definition of a WWTU.

#### New York

- NY regulates evaporators following EPA's policies and requirements.
- Up until the May 2011, considered evaporators to qualify for WWT exemption under the following criteria:
  - Tank system
  - Prior discharge from that process to POTW
  - Unit installed for compliance with CWA
  - New facilities cannot meet prior discharge criteria
  - Has state water authority
  - Not limited to dry cleaner evaporators.
- Best source of information is RCRA On-Line – 11881, 12923.
- EPA says that evaporators are "thermal treatment units".
- NY DEC asked EPA Region 2 if it could follow August 3, 2009 EPA Region 1 memo position but got no response, so took that as a "no".
- WWT exemption does not apply at most facilities. These facilities would need a full blown TSD permit, as cannot use generator treatment policy since it is considered thermal treatment.

#### New Jersey

- NJ follows EPA HQs position on regulation of evaporators.

## Rhode Island

- Working with EPA Region 1 on updated regulations, which are close to being finalized; sent out for review in December. Use the following definitions:  
“Evaporation unit means a tank or tank system that:
  - A. Heats wastewater to intentionally evaporate water to reduce the volume of the wastewater only and;
  - B. Receives and treats or stores an influent wastewater that is a hazardous waste, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste, or treats or stores a wastewater treatment sludge which is a hazardous waste and;
  - C. Is not used to dispose of hazardous waste and;
  - D. Has received a permit for wastewater discharge or a zero-discharge permit from the local Publicly Owned Treatment Works or the RIDEM.Evaporation unit does not mean a sludge dryer associated with a wastewater treatment unit. Also, sludge dryers not associated with wastewater treatment units shall be considered hazardous waste treatment units in accordance with Rules 7 and 8.”
- Under new regulations will require a permit from DEM or POTW for Zero Discharge Units.
- Evaporation units cannot be used to dispose of or recycle hazardous waste; only wastewater.
- Cannot evaporate D001 and D003 hazardous wastes.
- If no POTW connection, DEM could issue Zero Discharge Unit permit. Small universe of sites with no POTW.
- Must meet requirements for AABCC and air pollution control requirements.
- Similar to Vermont, do not view evaporation units as thermal treatment.

## EPA

- Region 1 sees WWT exemption as a loophole that should be tightened up. This was the reason for Region’s August 3, 2009 letter. CWA permits focus on discharges and not on equipment and how the material is stored and managed. Encouraging Region 1 states to tighten up on requirements for WWT units. The Region is trying to find middle ground between total exemption and full TSD permit.
- Thinks Limited Permits (NH) and Abbreviated Permits (ME) are fine approaches but cannot speak for EPA HQs.
- If accepts EPA HQs position and if evaporators are not regulated under CWA, then need a full TSD permit.
- States should use the functional equivalency policy in arguing for their approach to this issue.

## Next Steps

- NEWMOA is working on drafting a letter to EPA HQs on regulation of evaporators. Possible points to include:

- Status of waste water from dry cleaner operations – listed or characteristic waste - F002 or D039?
- Disagree with EPA HQs policy on zero discharge units and CWA WWT exemption.
- Need to address status of recovery of water and reuse onsite in a totally enclosed system; current policy outdated.
- Water is a resource and not a product; not making a product out of recycling water.
- Focus on a broader set of questions and not just definitions of WWT units and close-loop exemptions.
- Does not make sense to tie zero discharge units to the CWA; not permitting to do anything; also no need for a full RCRA permit.
- Draft letter will be circulated to NEWMOA HW Steering Committee for review and comment prior to submission to the NEWMOA Board for approval.
- EPA will share a copy of a relevant checklist with the group.
- EPA will share a copy of its policy memo with the group.