Notes
NEWMOA Hazardous Waste Conference Call
October 14, 2014

Topic: Plumbed-in totes: container or tank? Which regulations apply to this kind of unit?

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Participants: CT DEEP (4 people); Mass DEP (2 people); NH DES (6 people); NJ DEP (3 people); NYS DEC (12 people); RI DEM (1 person); VT DEC (1 people); EPA Region 1 (3 people); EPA Region 2 (2 people); NEWMOA (1 person)

Call leader: New Hampshire DES

Background
NHDES has been dealing with a hazardous waste (HW) generator that has replaced a HW storage tank with a tote that is hard piped to process equipment. The generator contends that the storage unit meets the definition of a container since it is comprised of a "portable device". NHDES believes the storage unit meets the definition of a tank because the hard piping renders the unit a "stationary device". The regulations that apply to a HW tank system are more extensive than those that apply to a container holding HW. NH is looking for the criteria that states use to differentiate containers and tanks when the collection device does not clearly fit into one of the other. NHDES wants to hear opinions from other NEWMOA states on the regulatory status of the storage units shown in the examples at the end of the notes and whether they are containers or tanks.

Federal and NH Hazardous Waste Rules define "container" as "any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled." 40 CFR 265 Subpart I, Use and Management of Containers.

"Tank" is defined as "a stationary device, designed to contain accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, or plastic) which provides structural support". 40 CFR 265 Subpart J, Tanks. Tanks require engineering controls, high level alarms, inspect daily, and PE certification, among other items.

Note: This is a related call to the 1/13/11 NEWMOA call on "Containers vs Tanks" – see NEWMOA archive for call notes.

See the end of the notes for pictures of the units that are discussed during the call.

Situation/Problem for Example 1
NHDES is evaluating the HW storage practices at a facility and has informed the generator that the "plumed in tote" (see exhibit 1 picture) meets the definition of a tank system. The generator contends that the storage unit is a container and has refused to comply with the tank system requirements. NHDES is concerned about issuing a formal action since the storage unit itself appears to meet the definition of a container found in 260.10 even though the use may fit better into the tank storage category. This unit has the following features:

- Flex connection at base, so it's not hard piped.
- Unit is moveable and sign indicates where fork lift can lift unit.
- Tote can be shipped offsite when full per USDOT standards.

They asked the other states on the call the following questions about both of the examples:

1. Is this a "container" or a "tank" under RCRA?
2. Has any state taken enforcement on a tank vs. container case? What was the outcome?
3. Has any state or EPA seen this on an inspection, and have any written interpretation or guidance on this type of unit?

CT – Asked about what the unit is used to store.

NH – D001 Ignitable waste.

CT – Was it ever moved onsite or used to transport?

NH – Not sure, company may have shipped as is, or could have pumped it out.

CT –1. Depends on how it is used at facility; how it is installed and used will determine if it is a container or tank.

2. Recall cases involving tanks at clean ups that were used as containers.
3. Have not seen this before but have seen other totes that were looked at as containers.

Has not seen a steel tote like this before, usually plastic ones. The website for Midstate (manufacturer of tote) described it as a Liquid-tainer, which is DOT compliant for shipping. Have seen totes functioning as a container.

MA – 1. Similar to CT, would look at on a case by case basis.

2. Have seen plastic totes in metal cage but not steel totes, these were viewed as containers based on use. No cases to report.

3. Need to check with Regions but may consider the plumbed-in tote a tank. These appear hard piped and stationery.

NH – Would view the storage unit in Example #1 as a container. It has flexible connections and is moveable. No written guidance materials available.

NJ – Would view Example #1 as a container too, concern over the flex pipe meeting Subpart CC standards regarding ventilation and off-gassing. If it's hard piped it would be a tank.

1. Agrees with CT determination depends on use onsite.
2. Would have engineers review design of system before making determination. No knowledge of cases on this issue.
3. No guidance materials.

NY – Best written guidance provided by Indiana Department of Environmental Management, which states "(device) intended to be moved place to place is a container, intended to be stationary (onsite) it is a tank. Even if it can be disconnected but intended to be stationary." Also saw something from CT in 2012. No written guidance in NY and no record of enforcement action on tank vs container.

RI – 1. Would depend on how device is used onsite. Agree with CT and NJ if device meets DOT standards and is used to ship HW offsite it's a container, if stationary and kept onsite it's a tank.
2. RIDEM has encountered the steel totes, which generators use to store spent solvent for onsite reclamation. Tote was connected to a still and process unit via hard pipe and considered a tank. Formal enforcement was issued to generator but did not have tank violations.
3. No written guidance.

VT – 1. Agreed with group that it depends on use of device and would review on a case-by-case basis.
2. One case involving N-Pro site that stored 1,000 poly totes that were not acceptable by DOT for shipment when full, so considered tanks. No other enforcement cases.
3. No written guidance.

EPA Region 1- Agree with group that if device can be transported, it's a container, but would decide on a case-by-case basis. The definition focuses on whether it is a DOT shippable container. The regulations do not focus on intent. There was no one on the call from the Enforcement Section so they could not address the second question.

EPA Region 2- Same view, depends on use of devices and determined on case-by-case basis. No knowledge of enforcement action specific to issue.

NH –First visit to Example #1 site viewed device as a container. Company provided additional information on use and NH re-considered and viewed it as a tank. Looked at issuing a formal action but concerned over burden of proof since company bought unit as a container. Company later added a high level alarm and secondary containment. Totes were used to replace a tank system that was under Subpart J.

RI – If the tote sits in some location for 20 years and is not shipped offsite, then it is a stationary device. The definition of a tank does not specify how long (unit) must be stationary. The same is true for a container, it could be shipped by design, but if generator never ships it offsite and hard pipes into system then it's stationary.

NH – The definitions of tank and container do not provide enough guidance.

CT – If the device is never shipped offsite, then it's a tank and that flexible piping is not a factor since the piping makes the unit fixed or stationary. Focus on how unit is actually used, not its design or capability. Generators can take a 5,000 gallon tanker and roll it into secondary containment and bolt it to the ground and it operates as a tank so it is subject to the tank requirements.

Situation/Problem for Example 2

NH – When inspected by NHDES, the company had modified this tote to have flexible connections to the waste level indicator and the feed line for the inflow of waste. The flexible piping means it can be easily disconnected and shipped at any time. But the piping, alarms, and other controls make the unit more like a tank. The group answered the three questions outlined above regarding the unit in example #2.

VT – It looks like the company meets most of the tank regulations, are they missing any?

NH – Yes, they missed daily inspections and PE Certification.

CT – Are there quick connections or threaded pipe fittings?

NH – A mixture of both on the tote, which replaced a Subpart J tank system. The company has a location in Virginia that was inspected by Virginia DEP and the same tote storage unit was considered a tank. Region 3 agreed with the position. So the company decided to set it up in NH.

CT – Theoretically, the tote could be moved but what happens to the process that generates the waste?

NH – There are two totes so the company could disconnect one and continue the process.

R1 – Are the units in a series so the overflow goes into the 2nd tote?

NH – Yes, but they can disconnect and use only one tote. Concerned about going formal as a tank violation because the definition of tank and container are not clear. The totes can be moved. The company states it is portable and used for storage so it meets the definition (of a container).

CT – During a 2005 training module, EPA stated that the container definition is broad. The tank definition states it is a stationary device. Example #2 is clearly plumbed-in and so it is more like a tank than a container. Another is that tanks have ancillary equipment while containers do not, so the tank rules provide greater protection than the containers rules. Look at how it is used onsite versus how it could be used. DOT containers are subject to regulation under Subpart AA,

BB, CC and as mentioned earlier that unit would not meet CC standards. The unit could not be moved in the case of an emergency.

NY –Another point, in an emergency situation the unit could not be moved easily especially if holding an ignitable waste.

MA –No state-wide consensus in. Agrees with CT if it's not used as a container, then it is a tank.

CT- It's telling that company used this unit to replace a Subpart J tank system, so they are using it as a tank.

NJ – Agree with CT that it is used as a tank, so it's a tank.

NY – Guidance that is above and beyond definition can be found in RCRA #12928. Makes a statement that a fracking tank can meet the Wastewater Treatment Unit (WWTU) definition. A mobile tank can be a tank if intended to be stationary when in operation. Portable when disconnected but used as a stationary unit.

RI – Mentioned one case which involved hard-piped steel tote used to hold solvent for reclamation. Case went formal and company did not object to application of tank rules. Agree with CT.

VT – Agree with CT and guidance from NY.

EPA Region 1 – Would consider as a tank unless they disconnect after accumulation limit and ship offsite, then could be a container.

EPA Region 1 – No document provided to date that shows that Region 3 has made a decision on the Virginia determination.

EPA Region 2 – Lean toward the unit being a tank.

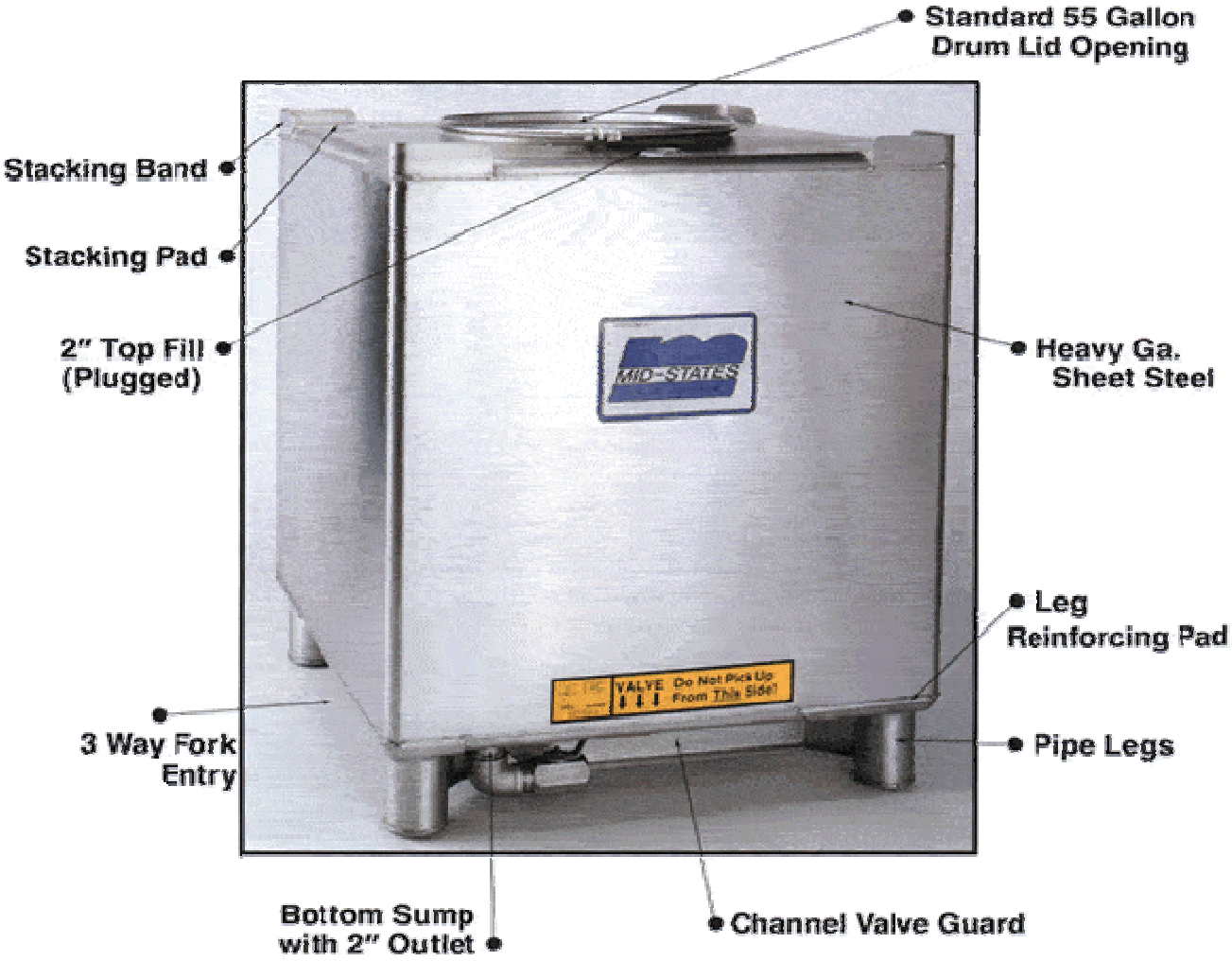
NH –Do not want to take this to court because the definitions are too vague.

RI – NH could allow EPA to over file and take case to court to obtain a judgment that could set precedent on a national level.

NH – NHDES is seeking an interpretation from EPA HQs on the topic and may ask company to submit a brief to EPA HQs on its determination.

CT – Two issues are separate between reaching a regulatory interpretation and prosecuting an enforcement action in court. You may go formal but settle out later to get system protections without going to trial.

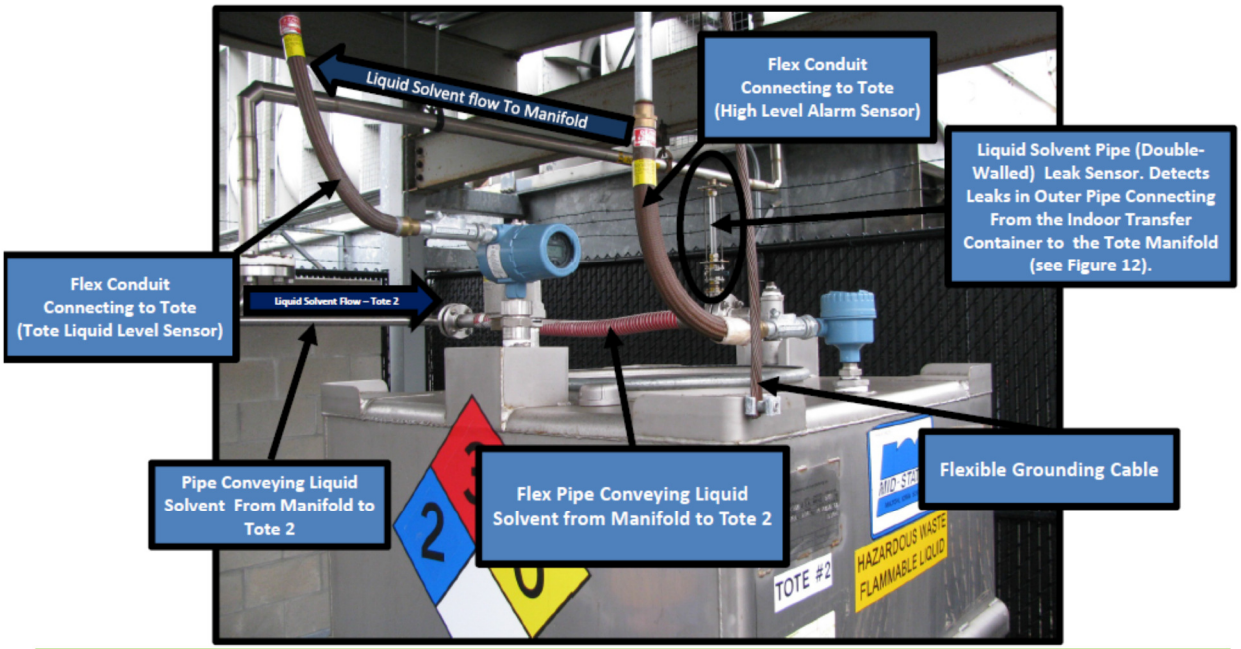
Example #1



The unit in example 1 has been significantly modified since 2011 and thus the reason for NHDES to revisit this issue.

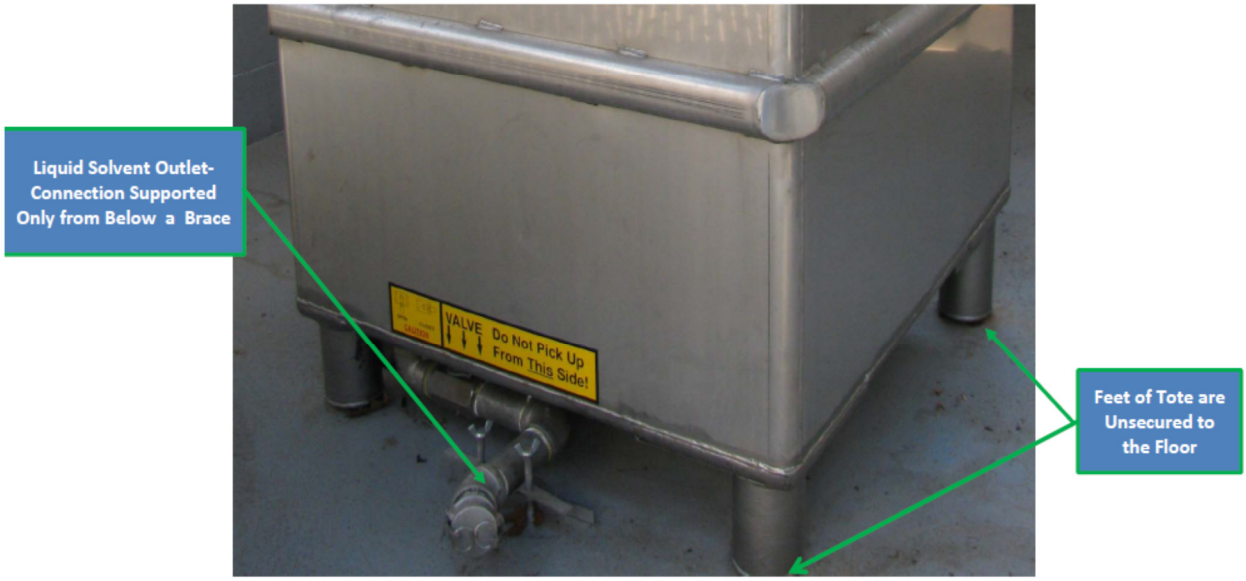
Example #2

Figure 11
Outdoor Tote Incoming Connections



Side/Front view of a solvent collection Tote 2, illustrating arrangement of interconnecting flexible piping and flexible electrical connections.

Figure 13
Outdoor Liquid Solvent Collection Tote



Front view of the tote base, highlighting the unsecured tote feet and transfer piping. Note that the transfer pipe is only supported from below by the brace, which does not prevent the tote from being moved (laterally or vertically) without loosening any connections.