

NEWMOA – Hazardous Waste Training Call on Sham Recycling
February 9, 2010

Participants:

CT – Ross Bunnell, 8 participants
ME – no participants
MA – Bill Sirull, 2 participants
NH – Todd Leedberg, 5 participants
NJ – Mike Hastry, 3 participants, and regional offices
NY – Tom Killeen, 4 participants, and regional offices
RI – no participants
VT – Lynn Metcalf
EPA Region 1 – Steven Yee
EPA Region 2 – No participants

CT

Forwarded a copy of two documents:
A powerpoint on HWAC Effective Substitutes for Products
Use Reuse memo 1997 document

They have not yet adopted the DSW and the legitimacy criteria. If they do, they will probably strengthen them since the final rule does not make all criteria mandatory.
They now evaluate based on policy memos.

They look at three types of materials exempted:

- a.) Materials which are used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed (40 CFR 261.2(e)(1)(i)).
- b.) Materials which are used or reused as effective substitutes for commercial products (40 CFR 261.2(e)(1)(ii)); and,
- c.) Materials which are returned to the original process from which they are generated, without first being reclaimed. Such a material must be returned as a substitute for raw material feedstock, and the process must use raw materials as principal feedstocks (40 CFR 261.2(e)(1)(iii)).

They look at the following legitimacy criteria to determine if the above exemptions are being made:

- a.) Does the material truly function as an ingredient or as a substitute for a commercial product (or is it just “along for the ride”)?
- b.) Does the use or reuse of the material result in distinct components as separate end products? (If so, it would be reclamation, not use/reuse.)
- c.) How contaminated is the material relative to the virgin material it replaces?
- d.) How variable is the material over time? (This is a quality control issue.)

- e.) Is the material used only in the amounts necessary for the production process, or is it used in excessive amounts? (If used excessively, this might be an indicator that the use or reuse is not legitimate.)
- f.) Is the material used as an approximately 1-for-1 replacement for the virgin material it replaces (i.e., if 1000 pounds of virgin material are normally used, is a roughly equivalent amount of waste sufficient to replace it)? (This is a similar question as the previous question).

For F006, they use the Sylvia Lowrance memo, and look at mainly for metal reuse scenarios.

For solid waste, CT has a beneficial use statute, where they can issue a general permit for specific materials use in a broad manner.

MA

Facilities besides CESQGs who conduct recycling/reuse activities are subject to a recycling permit.

Both onsite recycling and offsite recycling are covered.

For onsite recycling this is basically a notification.

For offsite, this is a presumptive approval application, which gives MA a specific number of days to review and send comments, otherwise the permit goes into effect. If MA sends a letter with questions, the facility cannot engage in the use/reuse until they answer the letter.

The application has to ID the destination facility where the use/reuse would occur.

At times MA may require a full recycling permit of a facility, which would have site specific conditions.

They have not adopted the DSW, and use the Sylvia Lowrance memo. They would support the use of all 4 criteria for legitimacy.

Solid Waste – BUDS are available.

Q. – Who has the burden when materials are received from offsite at a MA facility? It is on the MA facility to receive what they are allowed to. In a permit there may be conditions to assure the facility is receiving appropriate materials.

Q. – Sullivan Tire (NH) sends parts washer solvent to CRT in MA. Is this allowed? Bill will get back to Todd on this.

Q. – Have they issued any full permits? A. – Yes, but can't name any immediately.

Q. – What does MA require when MA waste is going out of state for use/reuse? A. – MA regulates what the generator does, and they require the generator get the destination facility to sign a certification that recycling/reuse occurs.

NH

No specific rules have been adopted for use/reuse, and they have not adopted the DSW.

In the situations they have dealt with this issue, they used the criteria in the Lowrance memo to get questions answered.

NH provided their policy letter on caustic solution, which lays out the basic criteria;

1. Meet relevant commercial specifications for virgin caustic.
2. Be as effective as the virgin material for which it is substituted; and
3. Be used under controlled conditions.

They also look to ensure that on toxics along for the ride is occurring and that no excess is used (which could indicate disposal).

When going out of state, they will contact the authorized state program about the facility.

NJ

They are a DSW state.

They like the legitimacy criteria adopted as part of the DSW, because it brings all the background information on the legitimacy criteria into one location.

To combat Sham recycling, they use a multiple program approach. Speculative Accumulation is always the most powerful, but they use the authorities of other program media to bear on the facility.

They use two main methods to evaluate if a process is legitimate.

Does the final material have value? Is the company handling the material in a manner which shows it is an asset to them.

How is the money for the operation coming in? If the money is predominantly coming in from gate receipts and not from the sale of the product, then it would not meet their criteria.

Q. – Is monetary the only criteria? A. They use this along with other legitimacy criteria.

Q. – Is KBF still in business. A. No, they had been purchased by Veridium, who subsequently closed the site.

Q. – on Old Bridge Chemical? They do not do as much business as they use to. They take spent effluent to make copper sulfate. NJ is ok with that now.

With KBF, NJ made them aware of the extent of the overall regulation, which became daunting and led to their sale. Hit them with storm water requirements, the need to be a certified lab, the need for air permits for their dryers. They used 200,000 gallon tanks and only made money if they could process a lot of material because they were taking in low metal content wastes. Their nickel recovery was a good process, but the others not so.

CT mentioned their permit assistance office which helps arrange a new company getting all their appropriate permits. It is an outside program and seems to work well. NJ mentioned their one stop program and that it doesn't appear to be effective.

NY

Not a DSW state ,and has no formal criteria for these determinations.

Claims are judged on a case by case basis, and EPA guidance like the Lowrance memo is used in the decisions.

NY has a BUD program, which issues their approvals via letter.

VT

Has not adopted the DSW, and there have not been any of these decisions made in the past year or so.

They have a recycling subchapter in their regulations.

Grant recycling/ reuse to generators, but there is only a few of them.

They would look at the individual criteria on a case by case basis.

EPA Region 1

Nothing on this subject to report.

General Questions

Q. CT struggles when generator in CT send materials out of state, with claims of use/reuse in the other states. What do other states do to chase it into the other states? And have other states made use/reuse determinations.

A. MA – Heritage in Indiana makes copper based fertilizers. MA inquired of Indiana, and IN DEQ allowed the use/reuse. MA then let their generator to use the exemption.

Paul from CT asked about a scenario where materials are pelletized and then shipped to Belgium for ‘reuse’, and how to verify that.

Ross from CT mentioned that you need to be careful when tracking things that go out of the country. Canada is probably ok, since EPA and Environment Canada get along well, but in a scenario where materials went to England, a call on the materials to England cause a bit of an issue. International shipments are subject to work done through the Dept of State, and you need to respect that process.

Todd from NH commented that they believe it is incumbent on the generator to do due diligence on the receiving facility, but they will contact other states about the reuse claims.

Ross asked about Total Filter Recycling. Mike said they are closed.

CT asked about Veolia Chemical Solutions in Indiana. No one had any information.