

**Notes for the May 10, 2011 NEWMOA HW Program Conference Call on  
“Consultant Competency”  
Draft: June 15, 2011**

Notes drafted by Lynn Metcalf, VT DEC with edits by Jennifer Griffith, NEWMOA

Business:

- Members-only hazardous waste area is active on the NEWMOA website: [www.newmoa.org](http://www.newmoa.org). It contains an archive of monthly call notes, annual workshop presentations, and letters sent to EPA. Link to it from public Hazardous Waste area. All people listed in work groups (2 people per state) already have user name and passwords. If you don't know/remember the password, there is a link for “Forgot your password” that can send you your password/user name. If others in your state want access, email their information to Jennifer and she'll set them up with credentials. This Summer NEWMOA will work with CT DEP to get pre-October 2010 call notes online.

States asked about security of the information in the members-only area. To gain access a user must have a user name/password. The password for this area is different than the usual NEWMOA format. NEWMOA is not subject to FOIA.

- NEWMOA workshops coming up:
  - Edison, NJ on May 24<sup>th</sup>. NYS DEC is attending the workshop through video conference. 30 NJ DEP staff are registered to attend.
  - Sturbridge, MA on June 23<sup>rd</sup>. Fewer people registered. No CT, ME or NH registrations yet. Hoping for more MA registrations too.
- Next Call:
  1. No call in June, but there is a call in July. Should that be switched?  
No preference from majority of states.
  2. The topic is Waste Pharmaceuticals management and MA, NH, NY, and RI are all listed as the lead for next call. Connecticut email sent this morning looking for information promptly due to an enforcement case – please respond directly to Ross. Should we discuss his questions on the call or do discussion via email? States asked for a chance to digest CT information before determination is made about call.

Topic Introduction by VT DEC: Concerns are that generators are getting a lot of compliance information from transporters and consultants. However, some of that information is not correct and we are continually frustrated by that. Are other states seeing this problem too? Is there a good way to get to the transporters/consultants for their bad information? Generators seem to be relying too much on transporters to help them be in compliance. Do your regulations address consultants/transporters? How do you deal with this problem? Do you regulate consultants?

- Example: Fuel-to-Fuel exemption question. VT has seen contractors try to use Fuel-to-Fuel for sludges and speedi-dri contaminated material.

**RI:** Has seen similar problem. No licensing of consultants, so we cannot go after them directly. If waste is improperly characterized, cite transporter for improperly completed manifest. We

know transporter completed the manifest and they are responsible to ensure that the manifest is properly filled out before accepting the waste. Transporter accepting waste by using generators phone number as temporary ID number - RI had informal action against transporter. One to two drivers thought RI regulations were similar to MA and they weren't. If the problem continued, DEM would have gone formal enforcement. There are very few options to enforce against consultants, especially when they don't actually handle the waste. Go after the generator in hopes that they handle the situation with the consultant.

**NY:** Tries to combat this with training and outreach. Recommend to generators that if manifests are filled out wrong, then they don't pay the transporters/consultants. NY has PE licensing, but no permitting of consultants. TSD and transporter need to ensure manifests filled out completely. Historically, DEC ran workshops across state for anyone who had submitted a manifest in the prior year. Focused training on how to complete manifest and how to complete annual reports. Last year, NEWMOA assisted and charged fee. Five trainings across the state with 500 total people trained. Now they are focusing on web-based training instead of face-to-face training. Region 3 NY has found a lot of people took on consulting jobs without knowledge. Assume something is hazardous when it is advantageous to manage waste as hazardous. DEC has always stated the burden is on the generator to make sure waste handled properly and properly train their people.

**NJ:** NJ has a few different programs. Registration required for all USTs Contractors. Site remediation program (including RCRA corrective action) has just started a licensed site remediation professionals (LSRPs) program. More specific to hazardous waste:

- The A901 Program: Law requires that anyone involved in business of solid and hazardous waste (brokers, generators, etc) must go through a criminal and civil background check and get a license. This eliminates criminal aspects – and increases reliability, expertise and liability. Brokers must have a license to operator and their license can be pulled if not acting properly. License requirements (transporters) include complying beforehand with all of the Federal requirements (EPA ID #, Financial assurance, DOT requirements). Then they must register their equipment. Requires proof of insurance, list of equipment/vehicles, leases with other companies, etc. A lot of work and only occurs when serious about working in this business. A901 license requires an annual renewal and the registrations every 2 years. No one willing to risk their licenses with mistakes. DEP performs the environmental portion of the background check. Division of Law and the state police do the criminal check. NYC instituted similar program which resulted in a slew of people trying to become transporters in NJ - most denied based on their criminal activity in NY. States asked to see the process/standards for denial – NJ to send out entire A901 rule.
- DEP holds training at least twice per year - generators, transporters, TSD Facilities invited and 600-700 are trained each year. Topics: Manifests, transportation. Authorized to cite 49 CFR regs and have someone there to address those topics.
- If see consistent manifest problems, can investigate those problems. For example, there were unmanifested waste reports from a TSDF - NJ cited 30-40 generators for failure to characterize waste. Generators contacted the transporter and the problem was significantly reduced. Any fraud/criminal activity, transporters/brokers can have license to operate in state pulled.

Most difficult aspect is that the generator must understand the material that they have. Mainly only see problems when the generator has new chemicals/new procedures. If a consultant does not generate or transport waste then it's difficult to enforce on them. But if the consultant is in the middle taking money from the generator and paying the transporter and/or TSD, then they must be licensed under A901. For consultants that prepare Contingency plans and help characterize – there is only the DEP seminars - NJ finds a lot of consultants attend the seminars. Most problems with consultant competency get picked-up in an inspection – but still not much they can do about it, but the Generator will not use them again for assistance. Have had companies removed or denied from hazardous waste registration/license, find them showing up as recyclers (less stringent) or as consultants. If they want to stay on the fringe, they can. DEP doesn't want to make recycling program as stringent as other programs. DEP maintains a list of UST professionals and a list of approved brokers/transporters is available.

**NH:** Do have same problem as VT and approached this through their hazardous waste generator training program. Each generator is required to attend a training annually (provided by the state). Generator is educated to know the right questions to ask. Get a number of consultants and transporters attending the training (safety kleen, heritage, clean harbors, crystal clean). Consultants and transporters are not required to attend, but helps them speak the same language and know how to apply the rules in NH. Transporters must be registered in NH. Generators are responsible to make sure manifests are completed correctly. CESQGs not required to attend training and they tend to rely mostly on transporters to complete manifests and characterize their wastes correctly. Still see problems with manifests, waste ID numbers, etc. - transporters completing manifests incorrectly. Training and certification for transporters would be good, but developing a new program is definitely not in the near future.

Do any states do outreach activity to small generators in how to pick a transporter, how to pick a consultant – especially for those facilities that only dispose of waste once every couple years and rely on them for filling out manifests correctly? **CT** – CESQG and SQG guidance document that provide advice to generators on how to select transporter and how to select a TSDF. CT to send link around. **VT** - CEGs are not required to hire transporters and can use the solid waste districts. If states decide they would like a generic tip sheet (that can be customized), NEWMOA might be able to do that type of work for the states - they can get approval from the Directors for something like this to be completed – would need to be incorporated into work plan for next year.

Do any states provide over-site of the content of the various commercial RCRA training programs held in their state? For example, Lion technologies training offer DES a free slot – NH attends not to critique training, but to give them appropriate info on state-specific requirements. **CT** – when on inspection, will ask to see training materials.

**MA:** MA does not regulate consultants in any way. DEP does enforce against transporters with inaccurate manifests. MA regulation has section that it is a violation to make a false or misleading statement or record. It is also a violation to keep an inaccurate/false/ misleading document. Generator must attest information is correct on manifests. Found false generator ID numbers – have sited transporters for this. Penalty up to \$25,000 per day per violation to making a knowing false/misleading statement if you knew that information was false/misleading at the

time it was made (see 310 CMR 30.006 and 30.007). MA also has an extensive transporter licensing program. DEP coordinates a Transporter Advisory Committee (TAC) that generally meets quarterly. DEP has been licensing transporters since 1982 (under water pollution program since 1970s) and has had a standing committee of transporters to advise state on any number of issues and assist in crafting regulations and other topics. Both state and transporters suggest topics - discuss violation issues with them after a case concludes. The TAC has evolved to include topics for TSDs as many transporters own TSDs. Approximately 20 attendees each meeting (tend to be the same people). About 120 MA-licensed transporters with 60-70% of them based out of state (some participate in the TAC via conference call).

**CT:** Generally, only deal with consultants through formal enforcement actions. Orders require companies to develop a future compliance plan. Also must develop a recycling checklist, and/or show documentation of corrective actions and/or closure of hazardous waste storage area and clean-ups. Consultants may be hired for any of these activities. CT lets individuals choose their consultants – typically shop around for best price. Typically don't have a problem with bigger companies – lots of engineers on staff and project manager and principal oversight. Can run into problems when smaller companies hire a low price consultant. In the enforcement action, DEP can request that the consultant provide their credentials and typically include a provisions that if DEP thinks the consultant not doing a good job they can require company who hired them to find a new consultant. DEP can add to the paragraph based on the specifics of the case, such as requiring consultants to have specific experience or number of years of experience. (this language not used in NON or NOV cases, mainly in referrals to AG, administrative orders and consent orders. CT has a list on their website of licensed waste haulers and TSDFs. Also a list of Licensed Environmental Professionals (LEPs) – the LEP program was set up specifically for remediation program, but it's worked out that a lot of LEPs also know a lot about RCRA so the list tends to be a good proxy.

DEP has also added new language in transporter permits. As a result of numerous illegible/incorrect manifests (many are pre-printed by the transporter), CT decided that the best point of pressure is new language in permits issued to transporters. Transporters must renew their permit every one or two years in CT. If transporter pre-prints manifests and provides them to their clients, the transporter is required to ensure the information typed and printed on manifests is correct and legible. Transporter is co-liaible for manifests if not correct. Language taken from 40 CFR 263, and is clearer on the transporters responsibility. CT will share language for permit (and sample permit language).