Summary Notes for the January 13, 2011 NEWMOA Conference Call

Topic: Containers versus Tanks – criteria that states and EPA use to distinguish between them, including such issues as "portable" versus "stationary", and "flexible" versus "hard" piping.

NEWMOA States participating: CT, MA, NH, ME, NJ, NY, and VT

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NH proposed the topic for this call. 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.

Prior to the call, NH circulated examples of collection devices observed on recent inspections:

Example 1

- Tote for D001 hazardous waste
- Connected by a piping system ending in a flexible hose to a fitting in the lid.
- Receives waste directly from process machine, and from manually dumped solvent.
- Tote is not moved but is vacuumed out to empty it.

Question – is this a "container" or a "tank" under RCRA?

NHDES looked at this as a "container" because the tote is capable of being moved/carried, tote is not fixed in position, tote is not hard-piped (rather a flexible pipe is used to fill the tote), and the tote is not permanently mounted to the floor.

Example 2

- 55 gallon drum hard piped to process vessel inside building to collect solvent vapor condensate.

DES looked at this as a "tank" because the drum was hard-piped, and not set up to be moved. The generator subsequently removed the drum so it became a non-issue.

NEWMOA

Jennifer began the call by asking states about the planning process for the live Inspector Training that we have every year. She will send out an email in order to organize a separate conference call to start the planning process.

New Hampshire

Container vs. Tank- It seems that it should be simple because there are definitions for containers and tanks. But sometimes it is difficult to differentiate.

Container- portable
Tank-stationary device

The management standards for a container are less stringent than for a tank - Subpart J requires engineering control, inspect daily, PE certification, etc. - these are some of the higher standards for tanks.

Things to consider:

- Is waste received directly from process or is it manually delivered
- Is unit intended to be moved or is it mounted to floor
- Is the waste vacuumed from the unit by a hazardous waste transporter or sent off-site in the unit
- Hard pipe vs. flexible pipe

NH would like to be able to develop guidance. For example, the document from Indiana could be helpful information. What do other states have for criteria? For example

- Moved or not moved
- Flexible vs. hard pipe

Participants then discussed the two NH scenarios outlined above.

MA asked how the waste was removed from the drum in the second example. Also, asked if it was shipped in another container. If shipped in a vessel more like a "container". NH noted that the generator has never shipped the waste and the drum was disconnected. The drum was 1/3 full at the time of the inspection.

New Jersey

NJ follows the federal rules and they have no other guidance. It can sometimes be a judgment call. A container is typically anything that can be moved or is designed to be routinely moved. Mobile type of unit is a container. NJ also looks at how the unit is being used. Typically consider the piping whether hard pipe or how hard to uncouple. If the device is hard piped, NJ will typically consider the device a tank because it cannot be moved easily. NJ doesn't consider the size of the unit, although tanks are often larger than containers. Mostly run across true tanks or DOT type containers (tote or drum). Sometimes it can be hard to distinguish but depends on the scenario. NJ also looks at how the collected material is shipped off-site – generally it's a tank if the contents are vacuumed out and shipped in something else, and a container if shipped in the container. New Jersey Agrees with NH on the tank vs. container interpretation for the two scenarios presented.

New York

See Attachment at end of notes for complete text of NYS remarks. NYS also follows the federal rules. Kiln direct transfer boxes –The May 2009 EPA/States DSW Network call tackled this issue. They are not DOT-compliant and so could not be hauled – they had to be emptied and left in place – so considered a tank. NY also mentioned the Indiana guidance document.

A container is a device intended to be moved- a mobile vessel container intended for transportation. A tank is permanent. If vessel is mounted to floor- it is stationary and so is a tank. However, just because the device is capable of transport does not mean it is not a tank. NYS looks mainly at whether the facility uses the unit as a stationery or mobile device.

Evaporators are hard piped and considered a tank. Does not depend on the shape or size of the unit, but WWTU exemption is a possibility. Sludge dryer and filter press typically considered tanks. MA noted that non standard vessels are problematic – just because easily come apart, they may still qualify as a tank. In order to quality under WWTU exemption must be a tank – a sludge dryer can qualify as a WWTU if used as a tank.

Vermont

Vermont uses the Federal definition for container and tank. Most of the time it is clear whether it is a tank or a container. VT agrees with determination NH made for the two scenarios they presented.

Permit Application is the deciding factor. We look at if the unit is designed to be moved when full and if it is DOT approved. Also look at how is the device being used? Is it portable, hard pipe vs. fixed pipe? For example: the ENPRO- 1000 gallon poly tank is not designed to move when there is waste in it. ENPRO described this 1000 gallon poly tank as a container. CT decided that the unit was a tank because it can only be moved when empty. Question of integrity- many manufacturers will not stand by their product if it were to be moved.

Connecticut

Use 260.10 federal definition of tank and container. CT does not have any guidance. Mentioned the RCRA training Module in which EPA states that the definition of a container encompasses all different types of portable devices and a tank is a stationary container to be operated in place. Factors used include:

- Stationary vs. portable
- Designed or purpose of use

Hamilton Case

Portable frac tank which stores wastewater on a temporary basis prior to disposal. Company contends that it was part of the wastewater treatment system and was exempt from RCRA. However, the sole purpose is to collect and store hazardous waste after treatment. 10,000 gallon mobile unit- connected with flexible hoses. CT determined that the frac tanks were not WWTUs as they were actually being-managed as a container. CT will share the letter they sent which discusses this finding.

Maine

Maine uses the federal definition for container and tank. Maine has one facility that is permitted to treat in tanks. This facility has a 300 gallon poly tank that they move into the building and use a few times a year – in use the tank is surrounded by a portable berm. Waste is pumped from a process (dip) tank into the poly tank and then neutralized.

Clean Harbors then pumps out the tank. Even though the tank is moved when not in use, Maine looked at this unit as a temporary treatment tank because it cannot be moved when full.

Participants asked about the type of treatment and how it is connected to the process. Maine responded that the poly tank is not hard-piped to the process. The waste in the process (dip) tank is contaminated and is neutralized in the poly tank. Solids are settled out for off-site disposal. Participants were conflicted as to how this unit should be classified – some states thought they would consider it a container and some a tank.

Massachusetts

MA also uses the federal definitions and there is no specific guidance. It is a case by case or a call in the field. In regard to the first NH example, MA would consider the tote, which stores an ignitable hazardous waste, a tank because it is not moved. MA agrees with NH regarding the second example that the drum, hard piped to process and collecting a vapor condensate, should be considered a tank. For MA, the key is not just if the unit is designed to be moved, but also how it is used – if not moved in practice, it would be a tank.

NEWMOA Synopsis

Most states use the federal definition for tank and container for guidance. States rely on inspector in the field to look at how the unit is used, and if it is not clear whether it is a container or tank, the inspector will discuss findings among office staff.

Jennifer also asked if any States were interested in starting a listserv or whether the current method of direct e-mails to a known recipient list is preferable. States were not interested in a listserv.

Next meeting is schedule for February 8, 2011 and the topic is "Use of MSDSs in HW Determinations" – another NH-lead call and NJ is on rotation for notes.

Attachment – Text Prepared by NYS DEC for call:

Here in NY we have kept essentially the same definitions of container and tank in our regulations as EPA's 260.10 definitions

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Back in May of 2009 the DSW Network - - hosted by EPA's Teena Wooten - - tackled a "container vs tank" issue when it addressed what are called "KilnDirect Boxes." These KilnDirect Boxes are similar in appearance to a roll-off but they also have a lift mechanism for automatically emptying drums of sludge into itelf, and they have mixers to keep the contents inside homogeneous so the solids don't settle out. Some states had determined these units were containers, and others said they were tanks. The determining factor turned out to be that, unlike roll-offs, the units were not DOT-compliant containers, so they could not be trucked away but rather merely emptied with a vactruck and remained at the site.

Probably the best guidance that emerged from all the back-and-forth on the status of these units came from Indiana, which since 2000 had said on their website the following: "In general, if a device is intended to be moved from place to place, and is actually used and managed as a mobile vessel, it would be considered a container. The intent is for devices which are for the most part permanent to be managed as tanks, and devices which are intended for transportation of waste to be managed as containers.

The Indiana guidance then goes on to say that:

"Just because a device can be disconnected from ancillary equipment, or is equipped with wheels, or has the potential to transport waste, does not exempt it from regulation as a tank if it is in fact managed as a stationary device. For example: In Case One, a 500 gallon fiberglass vessel is directly connected by hardpipe to a process which generates hazardous waste. Waste is pumped from this fiberglass vessel every ninety days into a truck for disposal offsite. Because the device is connected by pipes to the process and is never routinely moved and is not intended to transport waste, it would be considered a tank even though it has the potential to be moved when it is empty. Conversely, in Case Two, a 500 gallon stainless steel tote equipped with skids for a fork truck is connected to the same process and is routinely removed within 90 days by fork truck and placed on a vehicle for transport offsite. As such, it would be considered a container. Similarly, a unit mounted on wheels which accumulates waste and then is routinely utilized to transport the waste to other management units would also be considered a container. However, a tanker with wheels which is filled and emptied in place and is not routinely used to transport waste (i.e. it is managed as a stationary device) would be considered a tank even though it has the potential to be portable."

<That's the end of the Indiana guidance>

In general, NY feels that if a vessel is mounted to the floor or perhaps even held in place by hardpiping is regarded as stationary. This comes up with evaporator units and the WWTU exemption. Another example is an in-line Ion eXchange canister.

We avoid making container/tank determinations based on shape, in other words just because a vessel is cylindrical shaped like a drum doesn't automatically mean it is a container, and just because a vessel is cube-shaped doesn't automatically mean it is a tank.

"Non-standard" vessels can be problematic, such as a Plate & Frame filter press at a wastewater treatment facility. Our view is that just because it is designed to easily come apart as a stack of cross-sectioned slices does not mean that it cannot qualify as a tank (and in fact, regulatorily, unless it qualifies as a tank the WWTU permit exemption could not apply since one of the preconditions of a WWTU is that it be a tank). Another example of a potentially problematic "non-standard" vessel is a sludge dryer, which EPA has said in the Feb 21, 1991 Fed Reg (7201) can qualify as a WWTU as long as the sludge dryer qualifies as a tank.

Conceptually we believe that there is basically a “continuum” extending at one extreme from something like a 1-gallon jug that clearly is a container to - - at the other extreme - - an unmoveable 30000 gal concrete vessel that clearly is a tank, with a grey zone in between that depends mainly on a determination of whether the generator uses the vessel in a portable fashion.