

Draft Notes

NEWMOA Hazardous Waste Conference Call

Managing & Regulating Hazardous Waste Collected from Foreclosed Residential & Commercial Properties

November 13, 2012

Participants: CT DEEP (10 people); ME DEP (4 people); MA DEP (6 people); NH DES (9 people); NYS DEC (18 people); VT DEC (6 people); EPA Region 1 (3 people); NEWMOA (1 person)

Terri Goldberg, NEWMOA opened the call by describing how NEWMOA selected topics for conference calls and training workshops to hold in FY 2013. She noted that the Hazardous Waste Training Workgroup held two conference calls to brainstorm and decide on topics, and the group conducted a survey to gather feedback on priority topics. She stated that the schedule for the calls was sent out via email. She asked the group to let her know of any problems with the proposed dates for the calls. She said that she plans to change the date for the February call (since the proposed date is a holiday in some states) and will be sending out a doodle request to identify an alternative.

She also asked the group about the possibility of taping the calls. This has been an ongoing discussion. The reasons to tape the calls are to ensure that the notes are complete, accurate, and precise and to enable the note taker to be a more active participant. The reasons against taping the calls are that it would make it difficult if not impossible for participants to mention specific enforcement cases, clear ground rules would have to be established and adhered to, and participants would have to be made aware that the calls were being taped. EPA HQs Regulatory Interpretation Networking (RIN) calls are taped, and they have established some rules to address various concerns.

After discussion, Terri agreed to contact Jim O'Leary at EPA HQs about the guidelines for the RIN calls, how he records them, what he does with the tapes, and how he prepares the associated notes. She will develop a set of guidelines to share with the group to see if we can reach agreement.

Regulating HW Collected from Foreclosed Residential & Commercial Properties

NH DES drafted a synopsis of the issues related to Regulating HW Collected from Foreclosed Residential & Commercial Properties, including the key questions highlighted below; state responses are summarized after each question.

NH DES described their concerns about improper management of household hazardous waste (HHW) handled by contractors to banks that have foreclosed on residential properties. The banks want the properties cleaned-out quickly so they can resell them. The contractors may transport the materials back to their own HHW sites where it may be stored and handled improperly.

1.) Does your State agree that waste that is removed from a foreclosed residence by a bank's contractor is excluded as a "household waste"?

Background: Banks often hire a company to remove all waste/material from foreclosed residence in order to be able to sell the home. Waste can consist of oil paints, thinners, household cleaners, pesticides, gasoline, propane tanks, and aerosol cans. These clean-out contractors have told NH DES that banks are requiring them to remove all wastes within a short time (48 hours), are not willing to pay for hazardous waste disposal, and will not pay the company until the residence has been cleaned-out and documented as such with photographs. DES has not seen any contracts between banks and the clean-out company so are not clear what they say. NH DES regulation under their Hazardous Waste Rules states that any waste removed from the foreclosed residences, is considered a "household waste" and thus excluded from being a "hazardous waste" (Env-HW 401.03(b)(1)/261.4 (b)(1)) as long as two criteria are met:

- The waste is generated by individuals (or contractors) on the premises of a household or temporary/permanent residence; and
- The waste is composed primarily of materials found in wastes generated by consumers in their homes.

Responses:

CT: Agreed

ME: Agreed

MA: Agreed; HHW is fully regulated as HW once it is collected and stored elsewhere; HHW collection centers need a permit

NY: Agreed; noted that there was one fairly important difference between New Hampshire's approach and New York's and that is the second criteria of EPA's 261.4 (b)(1) exclusion, namely that "the waste must be composed primarily of materials found in wastes generated by consumers in their homes." Noted that this language appeared in EPA's original November 13, 1984 *Federal Register* (p. 44978), but that later in RO# 11898 (dated March 7, 1995) EPA worded it differently as "It is similar to the materials found in wastes generated by consumers in their homes." NYS stated that this 1995 language is what they believe applies to EPA's 261.4(b)(1) exclusion. NYS noted that their previous language of "composed primarily of materials..." would leave the door open for now for non-household-type wastes, such as from a home-based business, to enjoy the exclusion as long as, overall, the waste is "primarily" household waste (presumably >51 percent).

VT: Agreed; considering regulating HHW once it is collected and stored elsewhere

2.) Has your State made worked with banks or state banking departments on the clean out of foreclosed residences?

Background: NH DES has considered household waste being cleaned out of a residence to be HHW and maintained the exclusion as long as the hazardous waste is delivered directly to a permitted solid waste facility, HHW event, a facility that accepts HHW, or a notified hazardous waste generator. "Delivered directly" means the HHW is not taken off-site of the foreclosed residence and accumulated elsewhere (i.e., the clean-out company's place of business) before delivery to one of these facilities. The problem is that these facilities may not always be available to the clean-out companies. For example, there are not enough HHW events to cover the number of cleanouts, and the events are usually held on Saturdays and only during the

spring-fall seasons, not year round. HHW events also have quantity limits (e.g., 15 gallons), which is less than is needed to clean out most residences. Also, many town-owned and operated solid waste transfer stations do not accept waste from commercial entities. Therefore, a company that contracts with banks for removal of waste may not have access to the local solid waste facility, even though the waste was generated on residential property within the town.

Responses:

CT: No

ME: No; have received some phone calls from banks asking about how to dispose of large amounts of HHW (e.g., gas tanks and paints) that may not be readily disposable; provided compliance assistance to the banks; and also issued some provisional generator ID numbers to them so that they could ship the larger quantities of HHW to hazardous waste facilities

MA: No

NY: No

VT: No

3.) *Does your State allow household hazardous waste to be delivered by a contractor to solid waste facilities, HHW one-day collection events and centers, or HW generators?*

Background: Under NH regulations (Env-Hw 401.03(b)(1)), once HHW is separated and collected by a company/facility, it is no longer excluded as a hazardous waste, and the company is regulated as a hazardous waste generator. Companies that clean out residences and bring the waste/materials (assuming there is a hazardous waste component) back to their place of business become regulated as a hazardous waste generator. Recently, in response to a complaint, NH DES found a company operating in this fashion was not complying with the NH Hazardous Waste Rules, including rules specifying the need to notify DES as a hazardous waste generator, perform adequate hazardous waste determinations, and properly mark and store hazardous waste containers.

Responses:

CT: contractors can deliver HHW to collection events and centers; must provide advance notice

ME: if licensed HW transporters, contractors can deliver HHW to these types of facilities

MA: contractors can deliver HHW to collection events subject to quantity limitations imposed by the operators of the events and to permitted HHW collection centers; contractors cannot deliver HHW to solid waste facilities

NH: contractors can deliver HHW to HHW facilities; once collected off-site, a licensed transporter must transport the HHW

NY: contractors can transport HHW to any of these types of facilities since HHW exclusion under NY regulations applies through the whole HHW management cycle

VT: contractors can deliver HHW to HHW collection events and centers and to HW facilities

4.) *Does your State regulate companies bringing wastes/materials back to its place of business as hazardous waste generators or otherwise?*

Responses:

CT: companies transporting HHW back to their own place of business require a State permit; company is not a HW generator

ME: regulates activity; HW can be delivered only to a licensed solid waste or hazardous waste facility as applicable

MA: HHW can be transported only to a collection event subject to quantity limitations or to a center or to a HW facility; collection centers are designated SGQs and have to have EPA ID numbers

NH: company's place of business would become a HW generator and have to comply with generator requirements

NY: regulates companies as HHW facilities

VT: HHW can be brought back to contractor's place of business only if it has a solid waste permit

5.) Has your State done inspections or pursued enforcement with these types of companies?

Responses:

CT: No

ME: No

MA: No

NH: Not much; has a pending enforcement case against a contractor whose place of business stored both solid and hazardous household waste, but they were not complying with HW generator or solid waste requirements; were acting as a non-permitted solid waste facility

NY: No; has performed inspections of some cleanout contractors that have self-identified as HW generators but not done any enforcement (noted the problem of finding contractors' places of business that have not notified as HW generators)

VT: No; described a case from 2009-2010 involving a response to a complaint of a cleanout contractor storing collected HHW at his home and treating it in a dangerous manner; contractor was compelled to remove all the waste from his home and dispose of it properly

6.) The clean out of wastes/materials from foreclosed commercial properties is fully subject to the NH Hazardous Waste Rules. If a clean-out company brings waste/materials that are hazardous waste back to its place of business, that place of business would be considered a TSDF. Does your State agree with this, and have you done any inspections or enforcement with this type of facility?

Responses:

CT: Yes; case involved an auction house auctioning off a commercial property where the foreclosing bank had to pay for the costs of HW disposal

ME: Yes; commercial hazardous waste may first be delivered to authorized 10-day transfer stations in ME; no enforcement has been undertaken

MA: Yes; HW must be transported by a state-licensed HW transporter; not aware of any enforcement cases

NY: Yes, but CESQs do not need to manifest their wastes to a TSDF; difficult to find out about these foreclosures

VT: Yes, not aware of any enforcement

Additional Discussion

NY raised the issue of how state environmental officials can find out about foreclosures so that compliance inspections can be performed since there are no requirements on banks to provide advance notice of foreclosures. CT noted that their AG's Office is notified of all commercial foreclosures. MA recommended the PACER database, which is maintained by the U.S. Bankruptcy Court, and includes companies in bankruptcy. To access PACER, need to pay a fee. Maine mentioned that they receive notices about commercial facilities that file for bankruptcy, and they review them against their HW records.

NH asked for other states' positions on how to handle "hoarders" of HHW, which often results in the mixing of many types of waste. Companies may collect the solid and hazardous wastes from these homes and mix it all together where they store it after collection. Most states had no experience with this issue. MA indicated that at a minimum the home could be enforced against as an unpermitted solid waste transfer station. NY indicated that their definition of HHW would allow solid waste to be in a mixture with HHW up to 50 percent; the mixture might still be excluded from HW regulation as HHW. Hoarder would be likely to take in some non-household waste along with household waste, and this was an example of where making a distinction between "waste must be composed primarily of materials..." and "it is similar to the materials..." can be very important – if the former is used, it would improperly allow all of the hoarder's cleanout waste to be regarded as household.

VT indicated that the hoarder would be required to remove all HHW from their home and ship it to a solid waste facility.

NH also asked if any states have had contacts with state real estate commissions, companies, or trade groups on the issue of emptying wastes from homes prior to re-sale. CT and NY noted that they have taken calls from banks asking how to properly dispose of larger quantities of household wastes. Suggestion was made that compliance assistance needed to be provided to banks and realty companies on proper disposal of household wastes.