

**Notes**  
**NEWMOA Hazardous Waste Conference Call**  
**October 24, 2011**

**Topic: Management of Lab Packs**

Participating states: CT, ME, MA, NH, NJ, NYS, & VT; EPA Region 1 & EPA Headquarters  
Notes prepared by Bill Sirull, Mass DEP with edits by Terri Goldberg, NEWMOA

Terri Goldberg of NEWMOA first asked for comments on the draft list of conference calls for the remainder of FY 2012. NH suggested adding a call to review the Common Measures Project or a presentation on this subject at the next face-to-face training next June. EPA Headquarters offered to make a presentation at the next face-to-face training on the five new RCRA training modules, which are to be rolled out as final sometime during April-May, 2012.

NH had proposed the topic, “Management of Lab Packs” for this conference call and presented the following questions that they wanted the other NEWMOA states to answer:

- 1) What do the other states require for entering the amount of acutely hazardous wastes (“P” wastes) on manifests? The total amount of waste shipped, including the weight of the container or just the weight of the container contents?
- 2) For containers of “P” wastes placed in a storage bin, do states require labeling the bin with a HAZARDOUS WASTE sign, require labeling with required container information for all the individual containers of “P” waste, or allow labeling of only trays/boxes in the bin holding compatible “P” wastes with the same hazardous waste codes?
- 3) What violations of hazardous waste regulations regarding lab packs have states observed and enforced against?

The following summarizes the responses:

**CT DEEP**

Has no written guidance/policy on this topic.

- 1) Doesn’t require including the weight of packing material or of the outer container for lab pack containers in the weight recorded on a manifest; generators can put on the manifest only the weight of the lab packed containers.
- 2) Generators can label only the storage bin if less than one gallon in storage. CT has a specific regulation on this.

3) Have not observed any significant noncompliance. Do look at lab pack packing slips in the field and compare amounts to what are listed on manifests. Majority of enforcement taken based on discrepancies between the two. Generators tend to over report on manifests the actual amounts of “P” wastes shipped.

#### ME DEP

- 1) Counts only the total weight of the lab packed containers; not the packing material nor the drum weight.
- 2) Requires only labeling of individual containers holding “P” wastes or vials within larger containers.
- 3) No history of enforcement

#### Mass DEP

- 1) Counts only total weight of containers holding “P” wastes; not the weight of the packing material or the outer drum.
- 2) In a bin, generator can label individual containers or trays/boxes holding wastes with same waste codes.
- 3) Do check lab pack slips to determine generator status. In practice, generators putting total weights shipped on manifests. No history of enforcement.

#### NJ DEP

- 1) Doesn’t count weight of packing material; can put total amount shipped in item 11 of the manifest and explain amount of actual “P” waste shipped in item 14 of the manifest.
- 2) In the bin, can label individual containers of “P” wastes or baskets holding individual containers.
- 3) No history of enforcement.

#### NY DEC

- 1) Doesn’t count weight of packing material on manifest. Generators can voluntarily put weight of packing material in item 14 of the manifest. Agency counts only actual amount of “P” chemical waste in manifest tracking system. Containers themselves are not solid waste as long as they are fulfilling their intended function as containers.
- 2) A bin that functions as a cabinet is not a container; so each individual vial/container of “P” waste must be labeled.
- 3) Lab pack violations observed – missing waste codes. Inspectors have observed TSDs diverting to fuel blending at the next TSDs part of loads designated by generators for incineration causing violation of LDR certifications by generators.

## VT DEC

- 1) Counts only weight of the waste, not the packing material.
- 2) Bins—not much experience with this issue
- 3) No specific violations to report; do look at packing slips to determine potential incompatibilities.

## EPA Headquarters

EPA is rewriting its 1983 guidance. The new guidance will count just the residues of “P” wastes in the containers; not the containers themselves even if residues become mixed with other material in the lab packed drum. Containers themselves do not count in calculation of generator status. Generator at its discretion can use total weight on manifest and explain in item 14. EPA discourages triple-rinsing to obtain RCRA-empty containers.

Kristin Fitzgerald, EPA HQs indicated that containers holding P-listed residuals (e.g., non-triple-rinsed bottles formerly containing warfarin pills) would never be P-listed waste because of the language in the November 25, 1980 Federal Register [p. 78527], which states that the container itself was not P-listed, i.e., only the residues are P-listed. New York expressed the view that the containers would not be a P-listed waste while they were still in use as a functioning container since they were not yet a solid waste. After that time, for example if the lids were removed and the containers thrown into a 55-gal drum, such containers would be fully subject to the Mixture Rule and thus would become P-listed too, and so needed to be counted. To support its position that the exclusion was contingent upon the container still being in use, New York cited EPA’s guidance RO# 13468 as follows: “containers...are not solid wastes... because [they] continue to fulfill this intended use...” RO# 13468 is available at:

[http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/9CB8EC72E93305FA8525670F006C084A/\\$file/13468.pdf](http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/9CB8EC72E93305FA8525670F006C084A/$file/13468.pdf)

## Comment by NH DES:

Inspectors seeing transporters put total weights on the manifest without correction by the generator. Generators of > 1 kg/month of “P” waste in a reporting year must file Biennial Report even if CESQGs.

## Proposed next step:

- It was suggested that this discussion be continued on a different conference call or by emails after EPA releases its position on the topic.

The following is some additional information from NYS DEC that they shared after the Oct. 24<sup>th</sup> call:

EPA issued a November 4, 2011 letter (which listed Ms. Fitzgerald as the contact) on lab packs that definitely appears to indicate that the container is never counted as a P-listed waste.

Comments from NYS DEC: The Agency is actively contemplating asking EPA to reconsider its Nov. 4 position, and would welcome other states or even NEWMOA to also consider asking EPA to reconsider its Nov. 4 position on no-longer-in-use containers. NYS DEC recognizes that EPA might have wanted to find a way out of regulating the paper cups used by healthcare facilities to dispense warfarin pills to patients so nurses can simply discard them in the trash, but EPA's Nov. 4 letter does not assert that the residues in those paper cups is not P-listed, so there is really no advantage provided except not reaching the 1000 kg/mo LQG threshold as quickly because the weight of the paper cup would not count under the Nov. 4 letter. Another problem with the Nov. 4 letter is that on page 4 it says that paper bags can't be triple-rinsed – which is certainly not true – and EPA then leverages that misstatement into precluding bag-beating a paper cup to render it RCRA-empty.