

Summary Notes for the February 8, 2011 NEWMOA Conference Call

Draft: March 2, 2011

Topic: Use of MSDSs in HW Determinations – State policies and procedures concerning reliance on MSDSs for HW Determinations.

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

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NH proposed the topic for this call. NH is looking to see to what extent other states use MSDSs for generator knowledge in hazardous waste determinations.

Prior to the call, NH circulated some material on the issue and asked the following questions:

1. Are you digging deeper into inspections when MSDS are presented as “generator knowledge” for potential heavy metal contamination?
2. Do you have examples?
3. Is the auto body industry a targeted group in your state?
4. Do you have electroless nickel facilities – generating cadmium sludge and cadmium solution?

NH has put some focus on hazardous waste determination in the auto body industry since suppliers in the industry have assured that its paint does not contain metals. NH noted a discrepancy between OSHA (MSDSs) & EPA standards – MSDSs disclose the hazardous components of products and RCRA rules require generators to determine if waste is hazardous. MSDSs only need to list hazardous constituents that exceed 1% (or 0.1 % if carcinogen), so it is possible that constituents may be present over the regulatory limit for hazardous waste and not be listed on the MSDS. Depending on what auto body shop is painting and what type of paint used, the paint could fail for metals.

NH conducted a large project looking at DOT’s paint MSDSs. DOT indicated that there was no lead in the products, but when paint chips from DOT equipment and bridges were tested, lead was found, as well as some cadmium (for lead, “ND” to several hundred PPM for equipment and 10,000-20,000 PPM for bridges). CT questioned whether any thought given regarding historic paint. NH did consider that could have been the case on the bridges, but not for the equipment. CT identified a case of theirs where new paint on bridges tested high for lead. NH noted that none of the DOT’s paint suppliers would certify that their paints are lead-free even when lead was not listed on the MSDS.

NJ

Use MSDSs for any information that is available and helpful in hazardous waste determination but do not rely on them. Use the MSDSs with other available info to verify determination made by generator such as type of paint, if waste was analyzed in past, and

other case-specific info. If there is a question, would get the generator to sample/analyze the waste. If generator is a CESQG, would not require sampling because they are exempt from most RCRA requirements and can send wastes to landfills. It would be more important to verify accuracy of waste determination if SQG or LQG.

NY

MSDSs are used as a starting point but recognize that that the levels don't go down low enough for a hazardous waste determination. Also, waste changes after use (contaminated through use) so MSDSs will not account for the contaminants. Certain contaminants may come up regularly, or historically certain colors are more likely to be hazardous. For example, for electroless nickel facilities – the color yellow can be a problem. Rely on inspector knowledge of issues with certain colors. NY also focuses on SQG and LQGs because CESQGs can landfill their wastes. [NY later clarified that CESQGs must do a HW determination and self-transport or use a licensed hauler – they cannot put their wastes in the dumpster with their regular trash].

Noted from conversation: red and orange often contains lead, yellow often contains cadmium or chromium

VT

No written policy on issue, but generally allow MSDS to show that a waste is hazardous, but not to show that it is non-hazardous. At auto body/paint facility haven't allowed MSDS and require sampling or something from supplier.

CT

Allow knowledge of process to be used in hazardous waste determination, but generator must document basis for knowledge. If a company uses only an MSDS to determine something is not hazardous it will be questioned. Determination must be updated annually, though testing would be good for a lifetime if process/product has not changed. MSDS useless for constituents listed as proprietary. Another problem is that there is no way to determine what gets into a material as it's used unless the waste is tested.

Seasonal workers looked at compliance rates for auto body shops in urban areas and staff followed up with a regular inspection at places with compliance issues. It was found that auto body facilities don't have a good handle on their waste and filters have been found to come up with contaminants other than metals, such as MEK. Still bottoms were another problem – they are always F-listed wastes, but vendors are telling facilities that if they dry out the still bottoms, they can throw the solids in the trash. CT CESQGs cannot send waste to a landfill.

MA

Hazardous waste regulations apply to waste generated down to zero (VSQG), so all generators must make a hazardous waste determination and cannot landfill wastes. Generally MA's approach agrees with CT. Allow generators to use MSDS to call something hazardous, but not nonhazardous. One issue is technical grade chemicals can contain impurities from the process used to manufacture them. Have told generators

where it is suspected that constituent levels were elevated to go back to manufacturer or trade association (or another generator so long as valid) to see if products/raw materials tested hazardous. For used materials, generators would have to test to determine if hazardous. Haven't targeted auto body facilities for years so do not have any specific testing information.

NEWMOA Synopsis

States realize the limits of using MSDSs for making hazardous waste determinations. MSDSs may be helpful to identify parameters that waste should be tested for, but MSDS information used for hazardous waste determination can be misleading. There was also some discussion on the possibility of petitioning OSHA for better disclosure, such as listing all RCRA constituents on MSDSs. A petition would need documentation - any examples of MSDS problems in waste determination found by the states should be sent to NEWMOA for accumulation of this information. California's disclosure requirements, such as metals used in plastics, were cited as an example of where states can do something.

Several states mentioned that McCoy's "RCRA Unraveled" with as valuable resource – it is not free, but is very useful. It is updated each year and subscribers also get a newsletter that highlights issues.

States requested that NEWMOA archive the call notes in a members-only area of the NEWMOA website. Jennifer would be look into this and report back on the next call.

Next meeting is schedule for March 8, 2011 and the topic is "Identification and Management of Unknowns" – another NH-lead call and NY is on rotation for notes.