Message

From: Crosby-Vega, Terri [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E439D8D14EAF4F8DA8661E95A3037052-CROSBY-VEGA, TERRI]
Sent: 2/23/2016 7:10:24 PM
To: Danois, Héctor [Danois.Hector@epa.gov]
Subject: RE: Next Wednesday's RIN Call

Thanks! I sent Jim Oleary an email about the Subpart X Workgroup.

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From: Danois, Héctor
Sent: Tuesday, February 23, 2016 12:54 PM
To: Crosby-Vega, Terri <Crosby-Vega.Terri@epa.gov>
Subject: FW: Next Wednesday's RIN Call

See the 3rd topic

From: Oleary, Jim
Sent: Tuesday, February 23, 2016 12:49 PM
To: Kohler, Amanda <Kohler.Amanda@epa.gov>; amy.potter@dnr.state.ga.us; Arnold P. Mayberry <apm@adem.state.al.us>; Russell, Bethany <Russell.Bethany@epa.gov>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Bill Hogan <whogan@adem.state.al.us>; Bonnie Malloy <Bonnie.Malloy@dep.state.fl.us>; Brad Curvin <BCurvin@adem.state.al.us>; Brandon Finke <brandon.finke@state.mn.us>; Brian McMullen <brian.mcmullen@nebraska.gov>; Holtrop, Bryan <Holtrop.Bryan@epa.gov>; Carla Brown <cbrown@deq.ms.gov>; Figur, Charles <Figur.Charles@epa.gov>; charles.w.armstead@wv.gov; Mooney, Charlotte <Mooney.Charlotte@epa.gov>; Nelson, Cheryl <Nelson.Cheryl@epa.gov>; Rollins, Christopher <Rollins.Christopher@epa.gov>; cs@adem.state.al.us; Corey Holmes <CHolmes@adem.state.al.us>; Chachakis, Dan <chachakis.daniel@epa.gov>; Bartus, Dave <Bartus.Dave@epa.gov>; David Jarrett <david.jarrett@tn.gov>; Robertson, David <robertson.david@epa.gov>; Dean Ehlert <Dean.Ehlert@deq.idaho.gov>; Housley, Denise <Housley.Denise@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Meyer, Drew <meyer.drew@epa.gov>; DUJohnson <Dujohnson@mt.gov>; Ed Hammerberg <ed.hammerberg@maryland.gov>; Eby, Elaine <Eby.Elaine@epa.gov>; Eva Steele <Steele.Eva@epa.gov>; echamber@ndep.nv.gov; Behan, Frank <Behan.Frank@epa.gov>; Ney, Frank <Ney.Frank@epa.gov>; Victorine, Gary <victorine.gary@epa.gov>; Giles Steele-Perkins <giles.steele-perkins@state.ma.us>; Helms, Greg <Helms.Greg@epa.gov>; Tidmore, Guy <tidmore.guy@epa.gov>; H Vakili <hvakili@deq.virginia.gov>; Heather Jones <hjones@adem.state.al.us>; hoover@adeq.state.ar.us; J Hale <jhale@idem.in.gov>; Vega, Jackie <Vega.Jackie@epa.gov>; Blough, James <Blough.James@epa.gov>; james.paterson@state.ma.us; Piziali, Jamie <Piziali.Jamie@epa.gov>; Janine Kraemer <Janine.Kraemer@state.nm.us>; Saldenha, Jasmine <Saldenha.Jasmine@epa.gov>; Fowley, Jeffry <Fowley.Jeff@epa.gov>; Gaines, Jeff <Gaines.Jeff@epa.gov>; Jeff Mayhugh <Jeffrey.Mayhugh@epa.ohio.gov>; Jeffery Edwards <jeffery.edwards@nebraska.gov>; Jeffrey Salabritas <Jeffrey.Salabritas@dep.state.nj.us>; Jennifer Meyer <Jennifer.Meyer@dep.state.nj.us>; Jessica Gabaldon <Gabaldon@adeq.state.ar.us>; Young, Jessica <Young.Jessica@epa.gov>; Jim McNamara <Jim.McNamara@dnr.state.ga.us>; jduclos@des.state.nh.us; Kenneth

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Cc: Lee, Cpan <Lee.Cpan@epa.gov>
Subject: Next Wednesday's RIN Call

Hello again everyone.

As promised, below are the topics we plan to discuss at next Wednesday's RIN call. (Rather long email but such is life.) I don't think we have time for another topic unless you would really like to get RIN feedback.

Also attached is a draft copy of January's RIN call transcript.

I'll remind everyone next Monday of our call. Take care.

Topic: Hazardous waste determinations and damaged packages in transit (OECA)

Issue: When must Federal Express (FedEx) make a hazardous waste determination based on its procedures for managing and transporting damaged packages from their terminals to their hub for final disposition? FedEx argues that the RCRA regulations are preempted by the Hazardous Materials Transportation Act (HMTA).

Background:
In June, 2014, the California Department of Toxic Substances Control filed a complaint ("DTSC Complaint") alleging that FedEx violated California's Hazardous Waste Control Law ("HWCL") by failing to properly manage as hazardous wastes packages that were discovered at company terminals to be broken or leaking and that contained hazardous products such as acids, solvents, insecticides, batteries and other flammable, toxic, or corrosive materials.

FedEx argued that the leaker is not a waste until it determines that it is a waste at the hub where it determines the final disposition of the material. Because FedEx only makes this waste determination at the hub, FedEx argues that the material cannot be a hazardous waste under RCRA prior to FedEx's waste determination. On July 28, 2015, FedEx Ground Package System, Inc. ("FedEx") entered into a settlement agreement ("Settlement") with a group of California District Attorneys to partially resolve allegations that the company stored and transported packages of products that it found to be damaged or leaking, without complying with the applicable California requirements for hazardous and medical wastes. The Settlement does not resolve a related action brought by the California DTSC, based on similar allegations, nor a pending case brought by FedEx in federal court seeking a declaratory judgment that the California rules for transport of hazardous and medical wastes are preempted by federal law, and thus cannot be enforced against the company.

Question: Have other states or regions run across this issue and, if so, how have they handled it?

Topic: Kick-off reactions - Allowable or Regulated Treatment by Generators? (Region 4)

Region 4 has several generators that "kick off" reactions of D001 waste polymers (fiberglass etc) in open containers (the reaction is exothermic). One generator is conducting this action in an open shed – uncontrolled emissions (TN). The other generator is conducting this action in a containment building with negative pressure vented to a pollution control devise (KY). Generally the kicked off material is destined for a subtitle D landfill.

Question: Can generators treat hazardous waste in containment buildings without a permit if the treatment is conducted within 90 days of generation?

Topic: Identification of Subpart X – OB/OD experts (Region 3)

Region 3 is trying to get a sense of who the Subpart X – OB/OD experts are out there. Region 3's expert is retiring on April 1. Who is out there in the Regions and states who you would consider an expert in combustion, Subpart X - OB/OD guy. Anyone out there?

Topic: Recycling of solder and flux contaminated wipes and sponges. (Florida)

Florida has a number of electronics manufacturers that generate solder and flux contaminated wipes and sponges. Some of them manage the material as hazardous waste, however we have found that some are shipping the material as an exempt byproduct, rather than as a spent material for reclamation in metal recovery furnaces.

Florida agrees that solder dross is an exempt byproduct when reclaimed, but does not agree that used solder contaminated items are byproducts. How do other states regulate this material? **Would your state require solder wipes to be shipped to a secondary lead smelter/lead recovery furnace as a hazardous waste, using a manifest, or as an exempt material on a bill of lading?**

We are interested in whether or not the state's definition of solid waste affects this. Attached is a message Beth Knauss (Florida) sent to Sue Cosgrove and Joseph Mirabella of New Jersey, inquiring about Electrum's management of some solder wipes shipped there by a Florida facility. That message has an attachment about another site, Alpha Metals in Pennsylvania that also accepts wipes, and does not have a Part B permit. Alpha is operating under a 1999 interpretation letter from Pennsylvania that the used wipes are not solid waste when reclaimed.

The Part 266.100(d)(1)-(3) rules for industrial metal recovery furnaces include a provision that hazardous waste that exceeds 5,000 BTU/lb is not being processed solely for metal recovery. Used wipes are expected to exceed this heating value. In addition, the 261.1(c)(4) description of "reclaimed" was amended in 2008 to read "...in addition, for purposes of §261.4(a)(23) and (24), smelting, melting, and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in §266.100(d)(1) through (3) of this chapter, and if the residuals meet the requirements specified in §266.112 of this chapter."

A further complication is that Electrum may not be recycling the wipes on site. They are being exported to Canada, according to Ms. Cosgrove.

There are a number of other companies that advertise that they accept and recycle solder dross and other solder contaminated items under exemptions. Only one appears to have a RCRA permit - P.Kay Metal in California. I don't know if the others knowingly accept wipes - at least one specifically says that shipments containing wipes will be rejected. I am assuming that some of the materials are also being shipped to secondary lead smelters. I included some links below to places that advertise dross recycling

http://www.pkaymetal.com/Reclamation.htm

http://www.us-tech.com/RelId/1321952/pagenum/4/ISvars/default/EPA_Compliance%253a_Understanding_Management_of_Solder_Waste.htm

http://www.electruminc.com/recycling.php

http://alphaassembly.com/en/Markets/Recycling-Services

http://www.smtassociates.com/solder_dross_recycling

http://www.aimsolder.com/facilities

http://www.qualitek.com/solder_recycle.html

http://tintech.com/materials/

Topic: SorbIts Products used to clean up solvents (Region 5)

An inspector in Indiana found SorbIts products in use to clean up solvents in a facility, and the SorbIt products were not being managed as hazardous wastes. The inspector then asked EPA Region 5 the following two questions:

- Are the mats excluded via the wipes rule?
- Are the mats and absorbents exempt from the contained-in rule because the SorbIts are not disposed of and therefore are not a solid waste and therefore cannot be a Hazardous Waste?

So what does the RIN think?

See attached materials about SorbIts products.