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RESPONSE TO PUBLIC COMMENTS RECEIVED REGARDING NEWSTREAM'S LEVEL III CLASS B(3) RECYCLING PERMIT APPLICATION

The Massachusetts Department of Environmental Protection (the "Department") issued a Draft Level III B(3) Recycling Permit (the "permit") to NewStream on March 13, 2009. Public notice of this draft permit and the tentative determination by the Department to issue a final permit was published in two local newspapers on March 18 and 20, 2009. The thirty (30) day public comment period for this notice ended on April 20, 2009. One commenter submitted comments, which focused on sampling and analytical methodologies, and quality assurance and quality control (QA/QC) procedures used in the characterization and management of specification used oil fuel (SUOF).

In response to these comments, the Department has made extensive revisions to the permit, particularly to its Waste Analysis Plan (WAP), which now describes in detail the sampling and analytical methods and associated QA/QC procedures that NewStream will use to characterize SUOF. The revised WAP also references procedures found in SW-846 "*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*" that must be followed by NewStream, any laboratory contracted by NewStream, or the original generator of the used oil fuel received by NewStream when testing of the SUOF parameters is done. The permit has also been amended in several sections to address sampling requirements and "retain" sampling. Details of these changes are described in the following responses.

Comments (**bold**) and the Department's responses (*italics*) are as follows.

1. It seems that NewStream will not be required to perform any analytical testing to verify that the SUOF it receives meets minimum parameters. The generator of the SUOF (MA97) will be required to ship analytical results to meet the MA97 standards (i.e. halogens, metals, flash point, and PCBs), however, what controls will be in place to ensure that what the generator ships is representative? What if a generator qualifies a tank analytically and sends out subsequent shipments with the same SUOF analytical results for many weeks or months after the testing is done? NewStream could receive oil that is not representative (off-specification used oil fuel or even hazardous waste). A minimum of halogens, flash point, and PCB testing should be performed for every incoming load.

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD# 866-539-7622 or 617-574-6868.

DEP on the World Wide Web: <http://www.mass.gov/dep>

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NewStream's revised sampling and analytical requirements are provided in the WAP - Attachment IV of the permit. As described in the WAP, Newstream has pre-acceptance procedures that include waste identification based upon analytical data. In accordance with this WAP and the Newstream B(3) permit, the generator or NewStream will qualify a wastestream prior to acceptance of each shipment at the Newstream facility. Procedures described in the WAP require initial waste stream sampling and analysis followed by annual generator certification that no significant changes have been made to the process generating the used oil. Testing will include all parameters identified in 310 CMR 30.216, Table 1, and PCBs (if the used oil fuel is from a known source of PCBs; otherwise only SUOF being marketed by NewStream is required to be analyzed for PCBs). The allowable levels cited at 310 CMR 30.216 will be used to determine if the used oil qualifies as SUOF. In addition, a "retain" sample for each shipment will be taken and kept until the SUOF has been processed and has passed all outgoing sampling requirements (see Section B Operating Conditions 5.) to ensure that no "hot" loads of used oil are marketed.

2. Analytical methods and QA/QC parameters need to be put into the permit. SW-846 is a large volume that contains many methods. DEP should work with NewStream to determine what test equipment, methods, QA/QC, and other laboratory parameters are appropriate. These can all be a part of a QA/QC Manual for the facility.

The revised WAP contains a listing of all analytical methods applicable to the characterization of SUOF. The final permit requires NewStream to follow the applicable instructions in SW-846 for these analytical methods as they apply to, among other things, test equipment, methods, QA/QC, and other laboratory parameters.

3. A profile form is included in Attachment III of the draft permit. There is no mention as to how often, if ever, the generator of the used oil needs to update their profile; (or in other words, characterize their waste stream)? If the profile is a one-time form, the DEP needs to consider whether or not a profile form greater than one year-old is acceptable. If there is no timeline for re-profiling, a form can easily be five-plus years old before long.

Section 2. of the revised NewStream WAP requires the used oil generator to submit a new Waste Profile Form (WPF) whenever the process generating the used oil fuel changes, or whenever the evaluation of the analytical results indicates that the process has changed. In the event that a process has not changed, NewStream will nevertheless obtain an annual certification from each generator that the incoming SUOF has not changed and remains as described in the WPF. Every incoming SUOF that is not generated from a consistent source is required to submit a WPF.

4. The definition of "marketer" on page 4 and footnote 5 on page 4 (which takes you to page 24) is confusing. It is not clear whether or not NewStream would be able to sell spec used oil fuel only to burners or both to burners and other marketers. 30 CMR 260(2) seems to only allow sales to burners while 30 CMR 264(3) seems to allow sales to burners and other marketers.

Section 310 CMR 30.260(2) of the Massachusetts Hazardous Waste Regulations was amended in May 2009 to allow marketers of SUOF to market to other marketers or burners.

5. How will MassDEP ensure that oily water, in which there is no recoverable oil, is not accepted by NewStream as SUOF? Will a mass balance of MA97 receipts be tracked in the facility operating record to assure that only oily water from these loads is being received? How are MA99 wastewaters tracked currently? Can the DEP be assured that oil is not present in these MA99 wastewaters? Is there a de minimis level of oil (%) required for a shipment to be classified as SUOF (MA97)?

Oily wastewaters with no recoverable oil (i.e. a sheen only) is not considered an MA97/SUOF as there is no oil for the generator to sample. NewStream therefore may not accept oily wastewater without any recoverable oil as an SUOF (MA97). In addition, this oily wastewater with no discernable layer (i.e. measurable oil layer) would not be considered waste oil (MA01), but may be classified as either non-hazardous (MA99) wastewater, or possibly, a characteristic hazardous waste or listed hazardous waste. All MA99 wastewaters received are currently regulated under NewStream's Clean Water Act (CWA) permit [Number W062158/S05CI001A] issued by the MassDEP and its CWA permit Number 46, issued under Attleboro's EPA-approved Industrial Pretreatment Program. NewStream is not authorized to receive hazardous wastewaters. NewStream's Class B(3) permit does have a mass balance provision for the incoming SUOF, which covers the wastewater separated and transferred to the NewStream pretreatment facility and the SUOF generated and sold/transferred to marketers and/or burners (see section B 4. c. Daily Record Keeping).

6. The following comments address the SUOF Analysis Plan on page 12 of the draft permit which covers outbound shipments from Tank B4. Because of the extensive nature of Comment Six, the comment and response are presented as subdivisions a-e.

6a. There is no definition of what constitutes a “representative sample” or a description of how NewStream will be required to take such a sample. A QA/QC manual could easily specify this.

The WAP discusses “representative sampling” in Sections 1 and 5. The use of applicable sampling procedures ensure representative sample taking.

6b. For clarification purposes, “used oil” should be used instead of “waste oil” so that there is no confusion that waste oil (MA01) is allowed to be received in Tank B4 or NewStream in general. How will NewStream document that no additional used oil goes into B4 after sampling and qualification? Will there be a log of receipts in and shipments out from the tank? How will MassDEP inspect this item to insure that no additional used oil is received in B4?

Section B5, Outgoing SUOF, of the draft permit includes a requirement that Tank B4 be “locked out” when it becomes full and after sample taking is complete to ensure integrity of the used oil fuel characterization. As noted in Section B Operating Conditions 4.c., extensive record keeping is required. A mass balance relationship can easily be established to determine the appropriate amount of analytical testing based on the throughput of SUOF.

6c. The draft permit specifies the type of sample jar and labeling, but more specifics are needed. Again, a QA/QC Manual can discuss this. How large of a sample is needed? What types of jars will be used (glass, plastic, clear, etc.)? How long does the sample need to be retained? How will a representative sample be collected? Will the MassDEP require NewStream to ship spilt samples to an outside certified lab to verify that their analytical methods and results are valid? If so, at what frequency? This should not only be done when qualifying Tank B4, but also to qualify loads received from generators.

These comments are addressed in the WAP (Attachment IV) and the amended SECTION B, OPERATING CONDITIONS. Please see the Final permit for details.

6d. The draft permit discusses two possible actions following analytical results. One is that Tank B4 meets the spec oil standards and can be shipped pursuant to 30 CMR 30.223(3). This regulation seems to allow NewStream to ship the material using licensed transporters to licensed facilities both in and out of state. 310 CMR 30 CMR 30.222(c) states that out of state facilities need to be listed on the Class B(3) permit. Is NewStream planning to ship SUOF out-of-state? If so, the out-of-state facility needs to be listed in the permit.

Newstream will notify the Department, per SECTION A SPECIAL CONDITIONS 2.b., for authorization of a facility to which NewStream would like to ship SUOF. SECTION A SPECIAL CONDITIONS 2.b requires an updated list of those destination facilities with each new request for authorization.

6e. Option #2 discusses the three options if the specification oil does not meet analytical standards. The draft permit states that NewStream can conduct additional sampling in order to disprove the observed exceedance. What if one result comes up OK and one is over the limits? Does that automatically mean the tank is qualified because one of the two results is OK or does this make both results invalid? How many sample results constitute a qualified tank if an exceedance is found? If an exceedance occurs, shouldn't the retained sample from the trucks received and loaded into Tank B4 be analyzed? Should MassDEP require that a third-party, certified lab be required to analyze a sample from Tank B4 at some point? A standard operating procedure needs to be developed for this and proper sampling and analytical protocols need to be spelled out. Special consideration needs to be given to detections of PCBs because of the regulatory nature of these constituents and the environmental harm that they can cause if not managed properly. If NewStream "disproves" an exceedance do they still need to report it to DEP within 48 hours?

Issues addressing the sampling of "outgoing" SUOF not meeting the SUOF criteria have been addressed in the amended Section B Operating Conditions 5. See this section of the Final permit for details.

7. Per the regulations, Class B(3) facilities have to follow security and inspection requirements. Does a Security Plan need to be developed, approved and followed? Do inspection logs or a full Inspection Plan need to be developed, approved, and followed? It does not seem that the draft permit provides enough specifics for what to actually inspect, how often, and what constitutes an unacceptable condition that requires action. Page 10 of the draft permit discusses inspections but it seems that MassDEP approved logs need to be developed and placed in the permit.

A security plan and an inspection plan are required for all “Recyclers who Receive Recyclable Materials from Offsite,” per 310 CMR 30.206. All security plans and inspection plans required are developed on a site specific basis and shall follow the requirements at 310 CMR 30.206, which cross-reference requirements at 310 CMR 30.514: Security and 30.515(1)(a) and (b) for Inspection requirements. The NewStream facility has a 24-hour security detail. NewStream also has a surveillance system that allows personnel located in the office to view the truck loading area at all times. (See page 8 of NewStream’s Spill Prevention, Control and Countermeasure (SPCC) Plan.) The SPCC Plan Section 7.0 Inspections, Test, and Records, has been added as a reference in the permit at Section B Operating Conditions 3. Section 7.0 of the SPCC Plan details what constitutes a thorough inspection, which includes potential issues, actual issues, specific components for inspection, corrective actions taken, test procedures, as well as an inspection log which is signed by the inspector and the inspector’s supervisor.