

**WM Symposia 2009**

**Session 11**

***Hot Topics of U.S. Commercial LLW Management***

# Who Owns The Waste?

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- **Liability Issues and Concerns:**  
Transaction between generators, brokers and processors.
  - Who has the liability if the disposal turns out to be illegal or improper?
  - Can a generator relieve itself of liability at the point it declares the materials to be waste?

# Scenario

- Company A (a licensed operator) enters into a contract with Broker Company B;
- Broker Company B enters into a contract with TSDF Company C, and with Disposal Company D;
- Company A offers waste on a signed manifest to Company B. Company B offers waste on the same manifest to company C (TSDF);
- Company C goes bankrupt.

# Who owns the waste?

- Company A: The Generator – beginning point of the waste
- Company B:
  - Has a contract with Company A to properly dispose
  - Has a Return of waste clause in contract with Company C.
- Company C:
  - Has possession of the waste
  - Has a Contract with B for proper treatment and disposal
- TSDF State has a license obligation with Company C
- State of Origin: Has a license with Generator
- The Compact of origin – Is or is not party to inter-regional access agreement – which requires return of waste.

# The "Rule"

- Responsibility for proper disposition of Radioactive Materials can be transferred from one license holder to another.
- Responsibility for proper disposition of Radioactive waste does not transfer from the generator of the waste.
- Waste becomes waste when a license holder says it's waste.
- Our systems are highly dependent on the rule.
- Can someone identify the regulatory driver?

# When Waste Becomes Waste

- Under the rule above; a license holder determines that the material can not be used for the purpose it was required to accomplish. This concept assumes that the licensee (generator) can perceive all potential uses for the expended material.
- If the rule were true at the point the generator determines that there is no further use for the material they become liable for the newly created waste "in perpetuity".

# Return of Waste Clauses

- TSDF's and disposal sites at the direction of state regulators, have included provisions for return of waste in all their contracts.
  - How do return of waste clauses and contract actions for disposal affect generator liability?
  - How does a return of waste clause affect the regulatory responsibilities of waste generators?
  - What role do the Compacts play? What is required under the inter-regional access agreement for waste management?

# If Title and Responsibility can Transfer

- In discussions with State Regulators the default position has been that TSDF's contracts have a Return of Waste Clause which makes the party entering into the contract responsible for the waste if the return clause is invoked.
- In effect, then the Broker, by way of his contract with the Generator and in contract with the TSDF would be responsible for the waste.



# Return of Waste Clauses (continued)

- Return of waste clauses are often in contracts between TSDf, disposal sites and brokers or agents of the waste generators.
  - Do they have status in a regulatory environment?
  - What are the statutes for wastes generated in their state?
  - If a generator goes out of business does the state have responsibility for providing proper disposal for waste generated under their program/license?
  - Can waste be abandoned? What constitutes abandonment? Who has liability?
  - How does DOE having responsibility for greater than Class C affect Generator liability?
  - Does DOE play by the same rules for it's waste?
  - What is the regulatory/legal driver?

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